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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1529.

JOHN M. WILKERSON, SHERIFF OF SHAWNEE COUNTY, KANSAS, APPELLANT,

*vs.*

CHARLES A. RAHRER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 28, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 10, 1890.

1 In the Supreme Court of the United States.

*In Re* CHARLES A. RAHRER. *Habeas Corpus.*

Appeal from the circuit court of the United States for the district of Kansas.

JOHN M. WILKERSON, sheriff of Shawnee county, Kansas, appellant.

*Assignments of Error and Grounds of Appeal.*

Comes now John M. Wilkerson, sheriff of Shawnee county, Kansas, respondent in the court below and appellant here, by L. B. Kellogg, attorney general of the State of Kansas, and R. B. Welch, county attorney of Shawnee county, Kansas, his attorneys, and says that in the record and proceedings in the above-entitled matter there is manifest error and grounds for appeal, in this, to wit:

I.

The facts set out in the original petition for the writ of *habeas corpus* filed by said Charles A. Rahrer in said matter were not and are not sufficient to constitute a cause of action against the respondent, and they were not and are not sufficient in law to entitle the said Charles A. Rahrer to be discharged from the imprisonment therein alleged.

II.

The decision and order of the circuit court below discharging the said petitioner, Chas. A. Rahrer, are not justified by the facts set out and contained in the agreed statement of facts upon which the said cause was tried and the said decision and order based.

III.

The said circuit court erred in not remanding the said petitioner, Charles A. Rahrer, upon the return made to the writ of *habeas corpus* by the said respondent.

IV.

2 The said circuit court below erred in holding and deciding that, in order to make the prohibitory laws of the State of Kansas applicable to the sales of intoxicating liquors in the original packages in which they were imported from the State of Missouri into the State of Kansas, it would be necessary to have the said laws re-enacted.

V.

The said circuit court erred in not remanding the said petitioner,

Charles A. Rahrer, upon the facts set out and contained in the record.

L. B. KELLOGG,
*Attorney General of the State of Kansas;*
R. B. WELCH,
*County Attorney of Shawnee County, Kansas,*
*Attorneys for Respondent, John M. Wilkerson,*
*Sheriff of Shawnee County, Kansas.*

3 In the Circuit Court of the United States, District of Kansas.

In the Matter of the Application of CHARLES A. RAHRER for a Writ of *Habeas Corpus.*

To the Honorable C. G. Foster, one of the judges of the circuit court of the United States, district of Kansas:

Comes now Charles A. Rahrer and respectfully represents to your honor that he is unlawfully and illegally restrained of his liberty by John M. Wilkerson, sheriff of Shawnee county, Kansas, in the jail of said county, in violation of the Constitution of the United States; that he is so illegally and wrongfully restrained of his liberty by said sheriff as aforesaid by reason of the following facts, viz: That H. C. Maynard and Lisle Hopkins are citizens and residents of the State of Missouri and are partners doing business at Kansas City, in the State of Missouri, under the firm name of Maynard, Hopkins & Co.; that said Maynard, Hopkins & Co. are doing a general wholesale business in Kansas City, in the State of Missouri, in the sale of intoxicating liquors; that said Maynard, Hopkins & Co. do a general business of packing and shipping intoxicating liquors in original packages from their place of business, in Kansas City, in the State of Missouri, to various points in the State of Kansas and other States; that said Maynard, Hopkins & Co. constituted and appointed your petitioner, a citizen of the United States, their lawful agent in the city of Topeka, in the State of Kansas, to sell and dispose of for them in the original packages liquor shipped by the said Maynard, Hopkins & Co. to your petitioner from the State of Missouri into the State of Kansas; that on the — day of July, 1890, the said Maynard, Hopkins & Co. shipped to your petitioner,

4 at the city of Topeka, in the State of Kansas, from Kansas City, in the State of Missouri, a consignment of liquors packed by them and shipped from Kansas City, in the State of Missouri, in original packages to your petitioner in the city of Topeka, in the State of Kansas; that said intoxicating liquors so shipped were received by your petitioner in the city of Topeka as the agent of Maynard, Hopkins & Co.; that on the — day of August, 1890, your petitioner, as agent of Maynard, Hopkins & Co., offered for sale and sold in original packages a portion of said liquors so shipped to your petitioner by said Maynard, Hopkins & Co., as they might lawfully do under the Constitution of the United States and not otherwise.

Your petitioner further says that he made no sales of said liquor

so received by him, except in the original packages, the same as it was packed and shipped to him from the State of Missouri and received by him in the State of Kansas; that none of said original packages so sold by him were broken or in any way changed from the manner in which they were put up in the State of Missouri and shipped and received by your petitioner in the State of Kansas; that each package so sold by your petitioner was in the exact form and condition that it was in when shipped from the State of Missouri, and was separate and distinct from every other package; that while your petitioner was carrying on and doing a legitimate business in the sale of intoxicating liquors in original packages, as he lawfully might do under the Constitution of the United States, and on account of the sale made as hereinbefore stated, on the — day of August, 1890, there was filed in the office of the clerk of the district court of Shawnee county, Kansas, a complaint charging your petitioner with the sale of intoxicating liquors, in violation of the law of the State of Kansas; and your petitioner further alleges that the law of the State of Kansas under which your petitioner was arrested and is now in jail as aforesaid is the statute enacted to enforce the tenth amendment to the constitution of the State of Kansas, and is commonly called "the prohibitory liquor law;" that said statute and said amendment, in so far as they attempt or purport to prohibit or in so far as it is sought to construe them to prohibit the sales of intoxicating liquors in original packages in which they were imported into said State, are each and both unconstitutional and void, and your petitioner was arrested and is now held in jail by said sheriff under the pretense that said sales were violations of said prohibitory liquor law and for no other reason whatever; that upon the filing of said complaint a warrant was issued to John M. Wilkerson, sheriff of Shawnee county, Kansas, for the arrest of your petitioner; that afterwards, to wit, on the — day of August, 1890, your petitioner was arrested by said sheriff upon said warrant so issued, and is now illegally restrained of his liberty by said sheriff by reason of said arrest and not otherwise.

Your petitioner further alleges and avers that said restraint is wrongful and illegal, because he says under the Constitution of the United States he has the legal right to sell and dispose of intoxicating liquors shipped to him from the State of Missouri by said Maynard, Hopkins & Co., and received by him in the State of Kansas and sold as their said agent, so long as the sales made by him are made in the original packages in which they were received; that all sales made by your petitioner in the State of Kansas, and particularly the sales upon which complaint was made against your petitioner, and for which he was arrested and restrained of his liberty, were sales made in the original packages as the agent of said Maynard, Hopkins & Co., as he might lawfully do under the Constitution of the United States.

Wherefore your petitioner prays your honor to grant to him a writ of *habeas corpus*, and upon the hearing thereof that he be discharged without delay from said illegal and unlawful imprisonment.

6 STATE OF KANSAS, } ss:
*Shawnee County,* }

Charles A. Rahrer, of lawful age, being first duly sworn, upon oath says that affiant is the petitioner herein, and that he has read the foregoing petition, and that the matters and things contained and alleged therein are true.

CHARLES A. RAHRER.

Subscribed and sworn to before me this 26th day of August, 1890.
[SEAL.] W. E. DOM,
*Notary Public.*

Commission expires June 11, 1894.

HAZEN & ISENHART,
DAVID OVERMEYER, AND
EUGENE HAGAN,
*Att'ys for the Petitioner.*

Endored: No. 763, 6607. In the United States district court of the district of Kansas. Application of Charles A. Rahrer for a writ of *habeas corpus.* Filed Sep. 25, 1890. Geo. F. Sharitt, clerk. Filed Aug. 26, 1890. J. C. Wilson, clerk. Hazen & Isenhart, David Overmeyer, and Eugene Hagan, for the petitioner.

7 In the District Court of the United States, District of Kansas.

In the Matter of *Replication* of CHARLES A. RAHRER for Writ of *Habeas Corpus.*

To John M. Wilkerson, sheriff of Shawnee county, Greeting:

It having been made to appear to my satisfaction by the sworn petition of Charles A. Rahrer that he is illegally restrained of his liberty by you as sheriff of Shawnee county, Kansas, this is therefore to command you to forthwith produce the body of the said Charles A. Rahrer at the chambers of this court, and making return of this writ showing by what authority you detain the said Charles A. Rahrer.

C. G. FOSTER, *Judge.*

Attest:
[SEAL.] J. C. WILSON, *Clerk.*

Endorsed: 6607, 763. *In re.* Charles A. Rahrer, *habeas corpus.* Writ H. C. Filed Aug. 29th, 1890. J. C. Wilson, clerk, by K. J. Adams, deputy. Filed Sep. 25, 1890. Geo. F. Sharitt, clerk.

*United States Marshal's Return.*

Rec. the original writ of which the within is a true copy this 26 day of August, 1890, & served the original writ on the within-named John M. Wilkerson, sheriff, by delivering the same to him personally at Topeka, Shawnee Co., Kansas, this 26 day of August, 1890.

R. L. WALKER, *Marshal,*
By JAS. McMURRAY, *Deputy.*

Service, 2.00.

8 In the Circuit Court of the United States, District in Kansas.

To the Honorable C. G. Foster, judge of the district court in said district:

John M. Wilkerson, sheriff of the county of Shawnee, the defendant in the within-named writ, for return thereto, respectfully submits to your honor that true it is that the said Charles A. Rahrer therein named is confined and restrained of his liberty by the said John M. Wilkerson, sheriff of said county of Shawnee, but the said John M. Wilkerson, sheriff, alleges that the said Chas. A. Rahrer is so restrained lawfully by virtue of proceedings heretofore had in the district court of the third judicial district in and for Shawnee county, Kansas, a certified copy of which said proceedings are hereto attached, marked Exhibit "A," and made a part of this return, to wit:

A criminal action, No. 2398, now pending in said district court, in which The State of Kansas is plaintiff and Charles A. Rahrer *et al.* is defendant, in which said cause proceedings herein were had, to wit: First, affidavits filed with the clerk of said district court; second, an information filed with said district court; third, an order by the judge of said district court, indorsed on said information, directing the clerk thereof to issue a warrant for the arrest of the defendant; fourth, a warrant duly issued by said clerk, directed to me as sheriff of Shawnee county, for the arrest of said defendant, by virtue of which said proceedings I, John M. Wilkerson, sheriff of Shawnee county, hold or have said Chas. A. Rahrer in default of bail in the sum of $1,000 in custody, and is the true cause of his imprisonment.

Wherefore the said John M. Wilkerson has here before your honor the body of said Charles A. Rahrer, together with the said writ, as therein he is commanded.

9 Dated Aug. 26, 1890.

J. M. WILKERSON,
*Sheriff of Shawnee County.*

STATE OF KANSAS, }
*Shawnee County,* } *ss:*

John M. Wilkerson, being by me first duly sworn, on oath deposes and says that he is the sheriff of Shawnee county; that he has read and heard read the foregoing return to the writ of *habeas corpus* and knows the facts and statements therein set forth and contained, and that said return and the facts and statements therein set forth and contained are true.

J. M. WILKERSON.

Subscribed and sworn to before me this 26th day of Aug., 1890.

[SEAL.] H. C. BOWMAN,
*Notary Public.*

Com. expires Jan'y 4, 1894.

In the District Court of the United States, District of Kansas.

In the Matter of Application of CHARLES A. RAHER for writ of *Habeas Corpus.*

To John M. Wilkerson, sheriff of Shawnee county, Greeting:

It having been made to appear to my satisfaction by the sworn petition of Charles A. Rahrer that he is illegally restrained of his liberty by you as sheriff of Shawnee county, Kansas, this is, therefore, to command you to forthwith produce the body of the said Charles A. Rahrer at the chambers of this court, and making return of this writ showing by what authority you detain the said Charles A. Rahrer.

C. G. FOSTER, *Judge.*

Attest: J. C. WILSON, *Clerk,* [SEAL.]

Endorsed: Rec'd this writ this Aug. 26, 1890, at 3 o'clock p. m. J. M. Wilkerson, sheriff.

10 Endorsed: 763. *In re* Charles A. Rahrer, *habeas corpus.* Writ H. C.

STATE OF KANSAS, } ss:
*Shawnee County,* }

WM. HUDSON, ROBERT SIMS, JOHN BUTCHER, and WM. ZICKAFOOSE, being duly sworn to tell the truth, the whole truth, and nothing but the truth and true answer make to all questions that may be put to him by R. B. WELCH, county attorney for Shawnee county, concerning any violations of the prohibitory laws in Shawnee county within two years last past, answering the questions put to him by said county attorney, deposes and says:

Q 1. State your name, age, and residence.

Ans. 1. Wm. Hudson; 26 years; Rossville, Kansas.

Q 2. State all that you know concerning the violation of the prohibitory liquor law in Shawnee county within two years last past.

Ans. I know Lou Bernstein's O. P. place, in North Topeka, No. 840 Kansas avenue north, in the city of Topeka. I was there Monday, August 11th, with Mr. Zickafoose. We went in at the back door, but I saw afterwards that the front door was open. I bought 1 pt. of whiskey, paying 75 cents for it. There were two persons in charge. I paid the money, $1.00, to one and the other made the change for the first one, who then gave me the change. Mr. Zickafoose was present.

WM. HUDSON.

WM. ZICKAFOOSE, being duly sworn, on oath says he was present and saw the same as testified to by Wm. Hudson.

WM. ZICKAFOOSE.

JOHN BUTCHER, being duly sworn, on oath says in answer to the same questions:

Ans. 1. My name is John Butcher; they call me Curley sometimes; age, 38 years; live 12th St., Parkdale.

2nd. I know P. V. Griggs' place, 111 East 3rd street, city of Topeka. I was there yesterday with Kames M. Payton, and I bought two bottles of beer of Mr. Griggs, paying 50 cents for it.
11 This was about 4 p. m. yesterday, Aug. 11, 1890. Yesterday I also went to Fred. Heim's place, 119 Kansas south, near the Chesterfield, with one Whitlow—I think that is his name—a farmer living south in country. Whitlow bought of one of the two men in charge; Whitlow paid 75 cents for a pint. I hear their names are Brown. The one with the big mustache stood in the door, and the other one behind the counter and took the money. Yesterday, in forenoon, I saw one Pete Wheelan buy ½ pint of whiskey of the same party, paying 50 cents for it, Aug. 11th, 1890, at same place. On Saturday, Aug. 9, 1890, I bought 1 pint of whiskey in Chas. Rahrer's place, 402 Quincy street, city of Topeka, and —— Parker, who worked in S. F. Shops, lives Metsker's Addition, bought a keg of beer on same day. He paid Rahrer $1.50 for it in my presence.

J. C. BUTCHER.

ROBERT SIMMS, being duly sworn, on oath says in answer to the same questions put to him by R. B. WELCH, county attorney:

1st. Robert Simms; age, 49 years; reside Topeka avenue, North Topeka, Kansas.

2nd. On the 11th day of August, 1890, between 5 and 6 o'clock p. m., I saw the agents of Ferd. Heim Brewing Co., at No. 119 Kansas avenue south, in the city of Topeka, sell so-called original packages of beer and whiskey to purchasers. I counted 38 sales made in my presence, and saw the money pass to the agents and the beer and whiskey pass out to the purchasers. I know several of the purchasers, but I do not remember the names of many. One colored man by the name of John Walker bought 3 bottles of beer. Each bottle was in a separate pasteboard box. I saw one white man, whose face is familiar, but whose name I do not know, buy a pint bottle of whiskey and pay one dollar for it. The man behind the counter put the money in a cigar box under the counter, and the
12 other agent took the dollar out and put it in his pocket. There was quite a crowd. Two mail carriers bought beer; they bought two bottles of beer, and went through cigar-room and came back and complained that the beer did not come off of ice. One colored transfer man bought a pint of whiskey. I know him when I see him. This last was at 6 p. m.

his
ROBERT x SIMMS.
mark.

Witness:
R. B. WELCH.

STATE OF KANSAS, } ss:
*Shawnee County,* }

I, R. B. Welch, county attorney for Shawnee county, do hereby certify that on this 13th day of August, 1890, Wm. Hudson, Wm. Zickafoose, and, on Aug. 12th, John Butcher and Robert Sims duly appeared before me as witness in obedience to my subpœna duly issued by me, and, after being duly sworn according to law by me, I propounded the questions hereinabove set forth to him, and he made answer as hereinabove set forth, and in his presence I wrote said answers down, and after said answers were written he read his testimony over and duly signed the same in my presence.

Witness my hand this 13th day of August, 1890.

R. B. WELCH,
*County Attorney.*

Endorsed: Filed Aug. 21, 1890. W. E. Sterne, clerk dist. court.

A true copy.
Attest:
[SEAL.]

W. E. STERNE,
*Clerk District Court, Shawnee County, Kansas.*

13 STATE OF KANSAS, } ss:
*Shawnee County,* }

OTTIS M. CAPRON, being duly sworn to tell the truth, the whole truth, and nothing but the truth and true answer make to all questions that may be put to him by R. B. WELCH, county attorney for Shawnee county, concerning any violations of the prohibitory laws of Kansas in Shawnee county within two years last past, answering the questions put to him by said county attorney, deposes and says:

Q. 1. State your name, age, and residence.

Ans. Ottis M. Capron; age, 25; residence, Maple Grove.

Q. 2. State all that you know concerning any violation of the prohibitory liquor law in Shawnee county within two years last past.

Ans. I know Chas. Rahrer's place, 404 Quincy street, in the John Carter building, city of Topeka, Kansas. On Saturday, Aug. 9, 1890, I bought one keg (pony) at that place. I was with Seymore Mitchell. We met Chas. Rahrer, who told us to go to his place, as above, and tell his clerk we had ordered it some days before and he would let us have it. We did as he told us, and his clerk let us have the keg and took the money, $1.50. I have the keg yet. The clerk's name is W. W. Baine. This place is second business room south of 4th street, on east side of Quincy street, in the city of Topeka, Shawnee Co., Kansas.

O. M. CAPRON.

STATE OF KANSAS, } ss:
*Shawnee County,* }

I, R. B. Welch, county attorney for Shawnee county, do hereby

certify that on this 20th day of Aug., 1890, Ottis M. Capron duly appeared before me in obedience to my subpœna, and, after being duly sworn according to law by me, I propounded the questions hereinabove set forth to them and they made answer as here-
14 inabove set forth, and in their presence I wrote said answers down, and after said answers were written they, each of them, read his testimony over and duly signed the same in my presence.

Witness my hand this 20th day of Aug., 1890.

R. B. WELCH,
*County Attorney.*

Endorsed: Filed Aug. 21, 1890. W. E. Sterne, clerk dist. court.

A true copy.
Attest:
[SEAL.]

W. E. STERNE,
*Clerk District Court, Shawnee County, Kansas.*

15 *Warrant—General Form.*

521—4. G. S. 1868, ch. 82, §§ 126, 127.

STATE OF KANSAS, *Shawnee County,* } *ss:*

The State of Kansas to the sheriff of —— county, Greeting:

Whereas an information has been presented and filed against Charles Rahrer & W. W. Baine, charging them with the commission of the offense of selling intoxicating liquors in violation of law: Therefore

You are hereby commanded forthwith to arrest said person, and, in default of the amount of bail indorsed hereon, with good and sufficient surety, for his appearance before the judge of the district court of Shawnee county, in the third judicial district of the State of Kansas, on the first day of the next term thereof to answer the State of Kansas on said charge for said offense, to commit him to the jail of the county of Shawnee until discharged by law, and make due return of this writ.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Topeka, in said county, this 21st day of Aug., A. D. 1890.

W. E. STERNE,
*Clerk of the District Court,*
By J. S. CURTIS, *Dep. Cl'k.*

16 [Endorsed:] No. 2398. The State of Kansas, plaintiff, *vs.* —— ——, defendant. Warrant—general form. Bail required, 1,000.00 dollars each. W. E. Stern, clerk of the district court, by J. I. Curtis. Filed this 26 day of August, A. D. 1890. W. E. Stern, clerk of the district court. The sheriff must execute this warrant immediately upon its delivery to him.—G. S. 1868, ch. 82, § 127. Arrest is the taking of a person into custody that he may be held to

answer a public offense.—*Id.*, § 129. An arrest is made by an actua restraint of the person of the defendant, or by his submission to the custody of the officer.—*Id.*, § 130. He must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.—*Id.*, § 131. The arrest may be made on any day, or at any time of the day or night.—*Id.*, § 133. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.—*Id.*, § 132.

STATE OF KANSAS, }
—— *County*, } *ss:*

I hereby certify the within to be a true copy of the original warrant, with the indorsements thereon.

—— ——, *Sheriff.*

Received this writ this 21st day of Aug., 18—, at 6 o'clock p. m. August —, 1890, executed the same by arresting the within-named Charles Rahrer & W. W. Baine.

—— ——, *Sheriff.*

—— ——, 18—.

Executed the same by arresting the within named —— —— and committing them to the jail of Shawnee county, and delivering a certified copy of this writ to the jailer thereof.

J. M. WILKERSON, *Sheriff.*

—— ——, 18—.

I cannot find the within-named —— —— in my county.

—— ——, *Sheriff.*

*Sheriff's Fees.*

| | |
|---|---|
| Executing and ret'g warrant, 1st person | 25 |
| —— additional persons | 50 |
| App'v'g and ret'g —— recognizance | |
| Return "not found" | |
| Copy of warrant to jailer | 50 |
| Mileage, —— miles | |
| Total | $1 75 |

—— ——, *Sheriff.*

17 STATE OF KANSAS, } ss:
*County of Shawnee,* }

In the District Court, situated in and for the County of Shawnee, in said State of Kansas, of the September Term, A. D. 1890.

THE STATE OF KANSAS, Plaintiff,
*against*
CHARLES RAHRER and W. W. BAINE, Defendants.

Information for selling intoxicating liquors without first taking out and having a permit therefor, as required by law.

In the name and by the authority of the State of Kansas I, R. B. Welch, county attorney in and for the county of Shawnee, in the State of Kansas, who prosecute for and on behalf of said State in the district court, sitting in and for the county of Shawnee, and duly empowered to inform of offences committed within the said county of Shawnee, come now here and give the court to understand and be informed that Charles Rahrer and W. W. Baine, late of the said county of Shawnee, at the county of Shawnee, in the State of Kansas aforesaid, and with- the jurisdiction of this court, on the 9th day of August, A. D. 1890, in a certain room in a certain building, numbered 404, on Quincy St. south, in the city of Topeka, then and there situated, spirituous, malt, vinous, fermented, and other intoxicating liquors, without first taking out and having a permit therefor, then and there unlawfully did sell, barter, and give away, contrary to the statute in such case made and provided and against the peace and dignity of the State of Kansas.

R. B. WELCH,
*County Attorney.*

18 STATE OF KANSAS, } ss:
*County of Shawnee,* }

In the District Court, situated in and for the County of Shawnee, in said State of Kansas, of the September Term, A. D. 1890.

Information for selling intoxicating liquors without first taking out and having a permit therefor, as required by law.

2nd count.

In the name and by the authority of the State of Kansas I, R. B. Welch, county attorney in and for the county of Shawnee, in the State of Kansas, who prosecute for and on behalf of said State in the district court, sitting in and for the county of Shawnee, and duly empowered to inform of offences committed within the said county of Shawnee, come now here and give the court to understand and be informed that Charles Rahrer and W. W. Baine, late of the said county of Shawnee, at the county of Shawnee, in the State of Kansas aforesaid, and with- the jurisdiction of this court, on the 9th day of August, A. D. 1890, in a certain room in a certain building, numbered 404, on Quincy St. south, in the city of Topeka, then and there

situated, spirituous, malt, vinous, fermented, and other intoxicating liquors, without first taking out and having a permit therefor, then and there unlawfully did sell, barter, and give away, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Kansas.

R. B. WELCH,
*County Attorney.*

19 THE STATE OF KANSAS, } ss:
*County of Shawnee,* }

In the District Court, situated in and for the County of Shawnee, in said State of Kansas, of the September Term, A. D. 1890.

THE STATE OF KANSAS, Plaintiff,
*against*
CHARLES RAHRER & W. W. BAINE, Defendants.

Information for selling intoxicating liquors without first taking out and having a permit therefor, as required by law.

3rd count.

In the name and by the authority of the State of Kansas —, R. B. Welch, county attorney in and for the county of Shawnee, in the State of Kansas, who prosecute for and on behalf of said State in the district court, sitting in and for the county of Shawnee, and duly empowered to inform of offenses committed within the said county of Shawnee, come now here and give the court to understand and be informed that Charles Rahrer, W. W. Baine, late of the said county of Shawnee, at the county of Shawnee, in the State of Kansas aforesaid, and within the jurisdiction of this court, on the 9th day of August, A. D. 1890, situated in Topeka, then and there situated, spirituous, malt, vinous, fermented, and other intoxicating liquors, without first taking out and having a permit therefor, then and there unlawfully did sell, barter, and give away, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Kansas.

R. B. WELCH,
*County Attorney.*

4th count.

And in the name and by the authority of the State of Kansas I, R. B. Welch, county attorney in and for the county of Shawnee, in the State of Kansas, who prosecute for and on behalf of said State in the district court, sitting in and for the county of Shawnee, and duly empowered to inform of offenses committed within said county of Shawnee, come now here and give the court to further understand and be informed that Charles Rahrer & W. W. Baine, late of the said county of Shawnee, at the county of Shawnee, in the State of Kansas aforesaid, and within the jurisdiction of said court, on the 9th day of Aug., A. D. 1890, in the city of Topeka, then and there situated, spirituous, malt, vinous, fermented, and other intox-

icating liquors, without first taking out and having a permit therefor, then and there unlawfully did sell, barter, and give away, being another and different sale from that charged in the preceding count, contrary to the statute in such case made and provided and against the peace and dignity of the State of Kansas.

R. B. WELCH,
*County Attorney.*

20 [Endorsed:] No. 6607. *In re* Chas. A. Rahrer, *habeas corpus.* For selling without first taking out and having —. Return. Filed Aug. 27, 1890. J. C. Wilson, clerk. Filed Aug. 21, 1890. W. E. Stern, cl'k dist. court. —— ——, clerk. Filed Sept. 25, 1890. Geo. F. Sharitt, clerk.

Witnesses for State: Otis M. Capron, Seymore Mitchell, John C. Bureton, —— Parker, A. B. Lewinton, John M. Wilkerson.

THE STATE OF KANSAS, } ss:
*County of Shawnee,* }

Personally appeared before me W. E. Sterne, clerk of the district court of the third judicial district in and for the county of Shawnee, in the State of Kansas aforesaid, R. B. Welch, who, being by me first duly sworn, saith that the several allegations contained in the foregoing information are, according to the best of his knowledge, information, and belief, true in substance and in fact. This information is based upon the affidavits of Otis M. Capron and John C. Butcher.

R. B. WELCH,
*Co. Att'y, Shawnee Co.*

Signed in my presence and sworn to before me this 21st day of August, A. D. 1890.

W. E. STERN, *Clerk,*
By J. S. CURTIS, *Dep. Cl'k.*

21 *Certificate.*

STATE OF KANSAS, } ss:
*Shawnee County,* }

I, W. E. Sterne, clerk of the district court within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and correct copy of the information in four counts in the above entitled cause as the same appears on file in my office.

Witness my hand and the seal of said court hereunto affixed, at my office, in the city of Topeka, this 26th day of August, A. D. 1890.

[SEAL.]

W. R. STERNE, *Clerk,*
By J. R. McNARY,
*Deputy Clerk.*

22 In the Circuit Court of the United States, District of Kansas.

In the Mattter of the Application of —— —— for a writ of *Habeas Corpus.*

We, Chas. A. Rahrer, as principal, and L. Blackman, as surety, are held and firmly bound unto the United States in the penal sum of five hundred dollars.

The condition of the above obligation is such that whereas, on the 26th day of August, 1890, the said Chas. A. Rahrer filed in the circuit court of the United States his petition for a writ of *habeas corpus;* and whereas at the time of filing said petition said writ was allowed and made returnable forthwith; that on the 26th day of August, 1890, said writ so issued was served upon John M. Wilkinson, sheriff of Shawnee county; and whereas afterwards, to wit, on the 27th day of August, 1890, said writ was returned, together with the body of the petitioner, and thereupon the judge of said court fixed the bond at the sum of five hundred dollars, and continued the hearing of said application to September 25th, 1890, at ten o'clock a. m.:

Now, if the said Chas. A. Rahrer shall be and appear before the judge of said court at said time and abide the order and judgment then and there rendered, then and in that event this obligation shall be void; otherwise to remain in full force.

CHAS. A. RAHRER.
LUMAN BLACKMAN.

Approved by me this 27th day of August, 1890.

R. L. WALKER,
*U. S. Marshal,*
By L. D. De BOST, *Deputy.*

Endorsed: No. 6607. *In re* Rahrer. Bond. Filed Sep. 25, 1890. Geo. F. Sharitt, clerk.

23 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 2nd day of June, 1890, proceedings were had and appear of record in words and figures following, to wit:

THURSDAY, *Sept.* 25, 1890.

6607. *In Re* CHARLES A. RAHRER.

Continued to Sept. 30th, 1890.

24 *Agreed Statement of Facts.*

In the Circuit Court of the United States, District of Kansas.

In the Matter of the Application of CHARLES A. RAHRER for a Writ of *Habeas Corpus.*

It is understood and agreed by and between the attorneys for the petitioner herein and the respondent that the above-entitled application to be discharged upon writ of *habeas corpus* shall be heard and decided upon the following facts, namely:

That H. C. Maynard and Lisle Hopkins are citizens and residents of the State of Missouri, and are partners doing business at Kansas City, in the State of Missouri, under the firm name of Maynard, Hopkins and Co.; that said Maynard, Hopkins & Co. are and were at all the times herein mentioned doing a general wholesale business in Kansas City, in the State of Missouri, in the sale of intoxicating liquors; that said Maynard, Hopkins & Co. do a general business of packing and shipping intoxicating liquors from their place of business, in Kansas City, in the State of Missouri, to various points in the State of Kansas and other States; that in June, 1890, the said Maynard, Hopkins & Co. constituted and appointed the petitioner herein, Charles Rahrer, a citizen of the United States, their lawful agent in the city of Topeka, in the State of Kansas, to sell and dispose of for them in original packages liquors shipped by the said Maynard, Hopkins & Co. from the State of Missouri to Topeka, in the State of Kansas; that in July, 1890, the said Maynard, Hopkins & Co. shipped to the city of Topeka, in the State of Kansas, from Kansas City, in the State of Missouri, a car-load of intoxicating liquors packed by them and shipped from Kansas City, in the State of Missouri, in original packages, which car-load of intoxi-
25 cating liquors so shipped was taken charge of by the petitioner herein, Charles Rahrer, at Topeka, in the State of Kansas, as the agent of Maynard, Hopkins & Co.; that on the 9th day of August, 1890, the said Charles Rahrer, as agent of the said Maynard, Hopkins & Co., offered for sale and sold in the original package a portion of said liquor so shipped by the said Maynard, Hopkins & Co., to wit, one pony keg of beer, being a four-gallon keg, which keg was in the same condition in which it was shipped from Kansas City, in the State of Missouri, to Topeka, in the State of Kansas; that said keg of beer was separate and distinct from all other kegs of beer so shipped and was shipped as a separate and distinct package by Maynard, Hopkins & Co. from Kansas City, in the State of Missouri.

That the petitioner, Charles A. Rahrer, on the 9th day of August, 1890, offered for sale and sold one pint of whisky, which was a portion of the liquor shipped by Maynard, Hopkins & Co., as above stated; that said pint of whisky was sold in the same condition in which it was shipped from the State of Missouri and received in the State of Kansas; that it was separate and distinct from every other package of liquor so shipped, and was sold in the same package in

which it was received, being securely inclosed in a wooden box of sufficient size to hold said pint bottle of whisky.

It is further agreed that Charles A. Rahrer, the petitioner herein, was not the owner of said liquor, but was simply acting as the agent of Maynard, Hopkins & Co., who were the owners of said liquor.

That on the 21st day of August, 1890, there was filed in the office of the clerk of the district court of Shawnee county, Kansas, an information by R. B. Welch, county attorney of said county, together with affidavit of Otis M. Capron and John C. Butcher, appended and attached thereto and in support thereof taken under sec. 2543, General Statutes of 1889, charging the said Charles A. Rahrer
26 with violating the prohibitory liquor law of the State of Kansas by making the two sales hereinbefore mentioned. A copy of said information and affidavits so filed is attached to the return of the respondent herein and is hereby referred to and made a part hereof; that the petitioner herein, Charles A. Rahrer, was arrested upon a warrant issued upon the information and affidavit heretofore referred to and is held in custody by the respondent, John M. Wilkerson, sheriff of Shawnee county, by reason of said information so filed and said warrant so issued, and not otherwise.

Said Charles A. Rahrer was not a druggist and did not have, nor did his principals, Maynard, Hopkins & Co., have, any druggist's permit at the time of making the said sales of intoxicating liquor hereinbefore mentioned, nor had he or they ever made any application for a druggist's permit to the probate judge of Shawnee county, Kansas, before making such sales of intoxicating liquor as aforesaid. The said sales of intoxicating liquors were not made by said Charles A. Rahrer upon a printed or written affidavit of the applicant for such intoxicating liquors, as required under the prohibitory laws of the State of Kansas.

A copy of the warrant under and by virtue of which the respondent, John M. Wilkerson, sheriff of Shawnee county, holds the said Charles A. Rahrer is attached to the return of the respondent and is hereby referred to and made a part hereof.

The recent act of Congress relating to intoxicating liquors and known as the "Wilson bill" was signed by the President on August 8, A. D. 1890.

HAZEN & ISENHART.
D. OVERMYER.
R. B. WELCH, *Co. Att'y.*
L. B. KELLOGG, *Att'y Gen'l.*

It is agreed that the case of W. W. Beine shall abide the result of this suit, and also the case of P. B. Griggs.

27 Endorsed: No. 6607. *In re* Chas. Rareer. Agreed statement of facts. Filed Oct. 17, 1890. Geo. F. Sharitt, clerk.

28 In the Circuit Court of the United States for the District of Kansas.

*In Re* CHARLES A. RAHRER.

*Statement of Case.*

This is an application for the writ of *habeas corpus*. From the agreed statement of facts in this case it appears that the petitioner, Charles A. Rahrer, was the agent at Topeka, Kansas, of Maynard, Hopkins & Co., citizens of the State of Missouri, doing a general wholesale business at Kansas City, Missouri, in the sale of intoxicating liquors. The petitioner was appointed agent of said house in June, 1890, and from that time to the date of his arrest, on the 9th day of August, 1890, he continued as said agent to sell said liquors at Topeka, Kansas, in the original packages as imported, and not otherwise. For a sale thus made by him on the 9th day of August, 1890, he was arrested by the State authorities for a violation of what is known as the prohibitory law of the State, and he petitions this court for his discharge therefrom on the ground that he is restrained of his liberty, in violation of his rights under the Federal Constitution.

By order of the United States circuit judge Hon. John F. Philips, judge of the United States district court for the western district of Missouri, sat with Judge Foster on the hearing of this petition.

29 *Opinion.*

By JJ. PHILLIPS and FOSTER:

Two principal questions have been discussed by counsel in this case—first, as to the constitutionality of what is known as the Wilson bill, passed by Congress on the 8th day of August, 1890, and, second, whether, if said bill be valid, the existing prohibitory law of the state of Kansas applies, or is it needful that additional legislation should be had by the State to bring into action in the State the provisions of the Wilson bill.

Under the view taken of the last question we deem it unnecessary to enter upon any discussion of the first proposition, as with or without the constitutionality of the Wilson bill the result to the petitioner is the same.

The first section of the prohibitory law of Kansas is as follows: "Any person or persons who shall manufacture, sell, or barter in spirituous, malt, vinous, fermented, or other intoxicating liquors shall be guilty of a misdemeanor," etc. (Gen. Stats. 1889, sec. 2521.)

Under the decision of the Supreme Court of the United States in Leisy *vs.* Hardin, 135 U. S., 100, this statute, in so far as it attempted to prohibit the sale of intoxicating liquors imported into the State and sold by the importer or his agent in the original package, was inoperative and void, being in conflict with section three, article one, of the Federal Constitution, which places the power exclusively in Congress to regulate commerce with foreign nations and among the States.

Incident to this decision Congress, on the 8th day of August, 1890, enacted the Wilson bill, which declares:

"That all fermented, distilled, or other intoxicating liquors
30 or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

It is not claimed or pretended by the attorneys for the State that the petitioner previous to the passage of the Wilson bill was engaged in a business violative of any law of the State; but they do claim that immediately after the passage of said bill by Congress the petitioner's business became and is a violation of the prohibitory law of the State; so that the proposition stands in this form: On the 7th day of August, 1890, sales made by the petitioner were permissible and lawful under the Constitution of the United States, the prohibitory law of the State to the contrary notwithstanding; therefore if on the 9th day of August, 1890, the same act of the defendant is taken from under the protection of the Federal Constitution and is a violation of the same prohibitory law of the State the conclusion would seem to be inevitable that this changed condition of liability is because of the enactment of Congress on the 8th day of August, 1890. In brief, the contention of the State is that the act of Congress enlarged the scope and operation of the act of the State Legislature, making that which was a legitimate business one day a crime the next, not under any law of Congress, but against the law of the State. There is nothing in the wording of the act implying that Congress assumed such a power or intended to give such effect to this enactment.

31 At the time Congress passed the Wilson bill it was well known and recognized that the Supreme Court had decided that such a State prohibitory law was void, in so far as the dealer in imported liquors in the original package was concerned. In other words, there was no law, and could be no law, in existence making such business a crime. It cannot be assumed that Congress desired to introduce into the present police laws of the State an article or subject hitherto not included by those laws.

How could Congress know that the people of all or any of the States on the 8th day of August, 1890, desired to have such subject or article embraced in their police laws? The contention of counsel for the State is that it is for the several States themselves to determine the scope and purpose of their police laws, and Congress has not undertaken to arrogate to itself any power or control over that subject.

In employing the words "shall be subject to the operation of the laws of the State" Congress did not use them in a mandatory but in a permissive sense. The most ardent and enthusiastic advocate of a strong central government would spurn the idea that Congress

assumed to dictate or convey a mandate to the several States
32 in the matter of the exercise of their police powers. On the contrary, the Wilson bill left it to the free and untrammeled action of the several States to determine whether they would or would not include within their police laws this particular article of commerce. Every State in the Union probably has upon its statutes some police regulation of the traffic in intoxicating liquors.

These statutes as a rule exempt from their operation, either in express terms or by implication, imported liquors and their sale in original packages. In some of the States the exception was expressed, as in the Iowa prohibitory law prior to 1888 and the old New York law of 1855, and in all cases where not expressly reserved the law of the land, as declared by the supreme judicial tribunal, supplied the exception, thus indicating the general concensus that hitherto it was not recognized as among the police powers of the State to regulate or interdict among the States the traffic in imported liquors.

The decision in Leisy *vs.* Hardin, *supra*, but emphasized this fact and principle. The prohibitory law of the State of Kansas, where it touched upon interstate commerce, was no law at all at the time of this enactment nor since. Judge Cooley says: "The term unconstitutional law, as employed in American jurisprudence, is a misnomer and implies a contradiction, that enactment which is opposed to the Constitution being, in fact, no law at all." Cooley on Constitutional Limitations, 3. Again, at page 187, this same author says: "When a statute is adjudged to be unconstitutional it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their construction are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it
33 before the decision was made. And what is true of an act void in toto is true also as to any part of an act which is found to be unconstitutional and which, consequently, is to be regarded as having never at any time been passed and in legal force."

How, then, can the act of Congress in question have the effect and operation claimed for it by the attorneys for the State? For it must be kept in mind that a legislative act in conflict with the Constitution is not only illegal or voidable, but it is absolutely void. It is as if never enacted, and no subsequent change of the Constitution removing the restriction could validate it or breathe into it the breath of life.

For illustration, section ten of article one of the Federal Constitution declares that "no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." Suppose a State should pass any of these prohibited acts and after its passage the Constitution should be amended by the assent of the requisite number of States and the foregoing section dropped altogether, so that there was no longer any restriction on the States in this particular, would any one contend that a prior enactment in the face of the Constitution, dead at the time of its enactment for the want

of life-giving power, would at once arise from its tomb and become a living, actual, lawful thing?

Or suppose the Legislature of Kansas in these times of imputed financial distress should enact a law providing that in all cases of judicial sales of real estate hereafter made on foreclosure of mortgages there should be a stay of execution for one year after judgment. Such a law would seem fair on its face and would be in general terms like that of the prohibitory law of the State.

The courts unquestionably would hold that as to judgments
34 rendered or mortgages executed prior to such enactment the statute was inoperative and void, because it impaired the obligation of contracts and was in violation of section ten, article one, of the Constitution, although it might be held to be a valid law as to subsequent contracts; good in part and bad in part.

Now, suppose the Constitution should be amended and section ten should be excluded, could it be maintained that this act of the Legislature would become a valid law as to prior contracts without further legislation?

Where is the distinction between the supposed cause and the one at bar? In either case the Legislature undertook to legislate on a matter forbidden to it by the Constitution; in the one case prohibited in terms, and in the other taken away and denied to it by a delegation of all power over the subject-matter to Congress.

If the constitutionality of the Wilson bill is to be upheld upon the theory, as claimed by its advocates in the debate thereon in the Senate of the United States and in the argument at this hearing, that Congress in the exercise of its power to regulate commerce among the States and with foreign nations simply decided or declared that its jurisdiction should be confined to certain subjects-matter of commerce, or that certain subjects-matter and things which may be considered subjects of commerce should thereafter be excluded from its jurisdiction under the commercial clause of the Constitution, and that traffic in intoxicating liquors should thereafter be classified and remitted to the subjects within the police power of the State, such a law under every rule of construction must
34½ be prospective in its operation; and it must further be conceded that, as the right of the State to treat such an article of commerce as subject to laws passed by the State in the exercise of the police power comes for the first time and alone from the enactment of the Wilson bill until the State passes a law thereafter forbidding such traffic, it has never exercised the power or the discretion, call it what you may, lodged in it by Congress. From this conclusion we see no logical escape. The operation and scope of criminal laws should not be enlarged by implication, but they should be strictly construed; and where there is any well-founded doubt as to any act being a public offense, especially one not *malum in se*, it should not be declared such, but should rather be construed in favor of the liberty of the citizen. It follows that the petitioner is entitled to be discharged, and it is accordingly so ordered.

Endorsed: No. 6607. *In re* Chas. A. Raher. Opinion. Filed Oct 17, 1890. Geo. F. Sharitt, clerk.

35 UNITED STATES OF AMERICA, } ss:
*District of Kansas,* }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 2nd day of June, 1890, proceedings were had and appear of record in words and figures following, to wit:

MONDAY, *Oct. 20th*, 1890.

6670. *In Re* CHARLES A. RAHRER.

This cause came on for hearing before the court, petitioner being present in his own person and by Hazen & Izenhart and David Overmeyer, his attorneys, and the respondent, John M. Wilkerson, sheriff of Shawnee county, Kansas, by R. B. Welch and L. B. Kellogg, his attorneys, and thereupon this cause came on for trial upon the agreed statements heretofore filed in this cause, and the court, having heard the arguments of counsel, finds that said petitioner should be discharged. It is therefore considered, ordered, and adjudged that said petitioner, Charles A. Rahrer, be discharged out of and from the custody of the said respondent, John M. Wilkerson, sheriff of Shawnee county, Kansas, and that the said respondent pay all the costs of this proceeding, and thereupon said respondent prays an appeal from the judgment and decree of this court in this cause to the Supreme Court of the United States, which prayer for appeal is allowed and said appeal granted; it is further ordered that said petitioner, C. A. Rahrer, enter into a recognizance in the sum of $100.00, with sureties to be approved by the marshal of this court, to answer the judgment of the said appellate court in this cause; it is further ordered that
36 said respondent, John M. Wilkerson, sheriff of Shawnee county, Kansas, shall have until November 20th, 1890, within which to perfect appeal and file transcript of the proceedings in this cause into said appellate court.

37 UNITED STATES OF AMERICA, } ss:
*District of Kansas,* }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings had in said court in the action *In re* Charles A. Rahrer, No. 6607, in said court.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 21st day of Oct., A. D. 1890.

GEO. F. SHARITT, *Clerk.*

Endorsed on cover: Kansas C. C. U. S. No. 1529. John M. Wilkerson, sheriff of Shawnee county, Kansas, appellant, *vs.* Charles A. Rahrer. Filed October 28, 1890.

1529

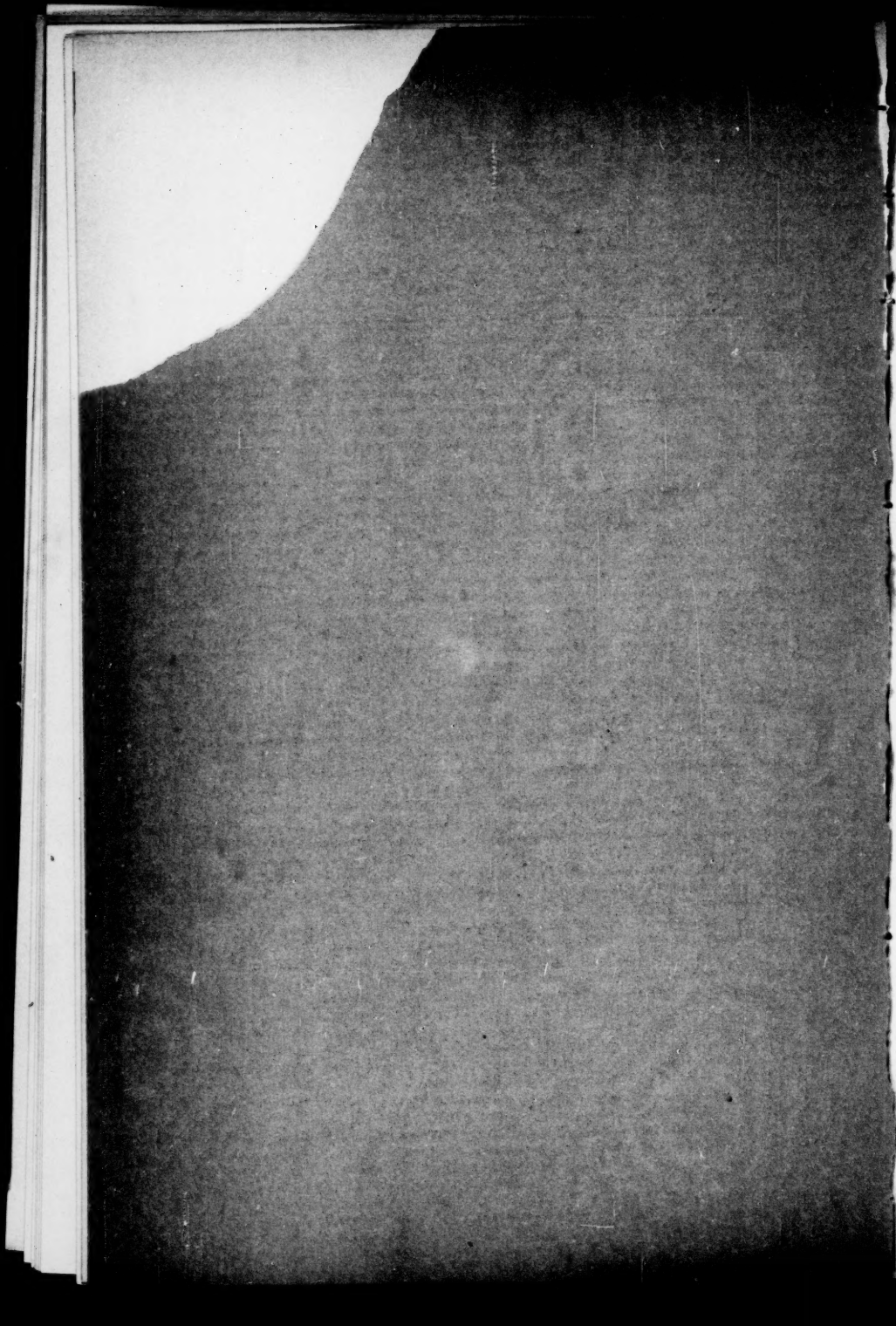
# IN THE SUPREME COURT

## OF THE UNITED STATES.

IN RE CHARLES A. RAHER, HABEAS CORPUS. APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS. JOHN M. WILKERSON, SHERIFF OF SHAWNEE COUNTY, KANSAS, *Appellant.*

## MOTION TO ADVANCE.

L. B. KELLOGG,
Attorney General of the State of Kansas,
R. B. WELCH,
County Attorney of Shawnee County, Kansas,
*Attorneys for Respondent John M. Wilkerson, Sheriff of Shawnee County, Kansas.*



# IN THE SUPREME COURT

## OF THE UNITED STATES.

IN RE CHARLES A. RAHER, HABEAS CORPUS.
APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.
JOHN M. WILKERSON, SHERIFF OF SHAWNEE COUNTY, KANSAS, *Appellant.*

## MOTION TO ADVANCE.

COMES now John M. Wilkerson, Sheriff of Shawnee county, Kansas, respondent in the court below and appellant here, by L. B. Kellogg, Attorney General of the State of Kansas, and by R. B. Welch, County Attorney of Shawnee county, Kansas, his attorneys, and moves the court to advance this cause for hearing and trial at the earliest possible date that will meet the approval of the court, and set the same down for argument upon a day certain, to be named by the court, upon the grounds and for the reasons following:

*First:* The matter in controversy in this cause is one of general and public interest to the people of the State of Kansas, and to the people of every

State within the United States. The question involved is, whether or not the laws of the State of Kansas and of the other States and Territories regulating the sales of intoxicating liquor must be reenacted in order that they may be applicable to the sales of intoxicating liquor in original packages imported from one State or Territory into another, since the passage of the act of Congress, approved August 8, 1890, providing that all fermented, distilled or other intoxicating liquors, or liquids transported into one State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

*Second:* The question of the constitutionality of the said act of Congress, known as the Wilson bill, is directly involved in this cause as presented in the said Circuit Court, and although the court below declined to pass upon it, the question is here presented by the record.

*Third:* The decision of the court below has opened the door to the sales of intoxicating liquors in original packages in violation of the constitution and laws of the State of Kansas to the same extent

and in the same manner as prior to the passage of said act of Congress, known as the Wilson bill, and since the decision of this court in the case of *Leisy v. Hardin*, 135 U. S. 100. The effect of the decision of the court below in this case is to nullify the said act of Congress known as the Wilson bill, until such time as the Legislature of the State of Kansas, and of the other States, shall have opportunity to reënact the laws of the said several States for the regulation of the traffic in intoxicating liquors.

L. B. KELLOGG,
Attorney General of the State of Kansas,
R. B. WELCH,
County Attorney of Shawnee County, Kansas,
*Attorneys for respondent John M. Wilkerson, Sheriff of Shawnee County, Kansas.*

Office Supreme Court U. S.
FILED,
DEC 15 1890
JAMES H. McKENNEY,
CLERK

No. 1529.

# IN THE SUPREME COURT

## OF THE UNITED STATES.

JOHN M. WILKERSON, SHERIFF OF SHAWNEE COUNTY, STATE OF KANSAS, *Appellant*,
*vs.*
CHARLES A. RAHRER, *Appellee.*

*No. 1529.*

## BRIEF FOR THE APPELLANT.

L. B. KELLOGG, Attorney General of Kansas,
R. B. WELCH, County Attorney of Shawnee Co., Kansas,
*For the Appellant.*

KANSAS PUBLISHING HOUSE, TOPEKA.

# IN THE SUPREME COURT

## OF THE UNITED STATES.

JOHN M. WILKERSON, SHERIFF OF SHAWNEE COUNTY, STATE OF KANSAS, *Appellant*,
vs.
CHARLES A. RAHRER, *Appellee*.

*No. 1529.*

## BRIEF FOR THE APPELLANT.

THIS was a proceeding in *habeas corpus* in the court below. Charles A. Rahrer, the appellee here, was the petitioner for the writ. J. M. Wilkerson, the appellant, was and is the sheriff of Shawnee county, in the State of Kansas, and as such sheriff had the petitioner in custody under a warrant issued upon an information filed in the District Court of Shawnee county, Kansas, charging him with unlawful sales of intoxicating liquor in violation of the Constitution and laws of Kansas.

Immediately upon his arrest under the process of the State of Kansas, and without making or attempting to make any defense in the State court, Rahrer

filed his petition for a writ of *habeas corpus* in the United States Circuit Court for the District of Kansas, and was by that court, upon hearing and consideration, discharged from imprisonment. The State of Kansas brings the case here in the name of the appellant for review upon appeal.

There is no controversy as to the facts. The petitioner was the agent of Maynard, Hopkins & Company, wholesale liquor dealers in Kansas City, Missouri. On the 9th day of August, A. D. 1890, as such agent, he sold in the city of Topeka, in said Shawnee county, Kansas, a four-gallon keg of beer, and also one pint bottle of whisky, without having any druggists' permit, as required by the prohibitory liquor laws of the State of Kansas. The beer was sold in a four-gallon keg, and was decently enough an "original package" under the decision of this court in *Leisy vs. Hardin*, 135 U. S. 100. The whisky sold was in a pint bottle, inclosed in a wooden box large enough to contain it. If for the purpose of violating the Constitution and laws of the State of Kansas, a wholesale liquor dealer of the State of Missouri is permitted and entitled under the decision of *Leisy vs. Hardin*, supra, to abandon all the usages and customs of the wholesale liquor trade in the importation and sale of intoxicating liquor, and become a retail vendor thereof in quantities as small as a single pint of whisky, then the pint of whisky was also an "original package"; otherwise it was not. If not an original package,

the pint of whisky was sold without the vestige of any authority in law therefor, real or pretended.

## I.

The contention of the petitioner in the court below was that he was restrained of his liberty in violation of his rights under the Federal Constitution.

The United States Circuit Court ought not to have interfered in this matter, and ought not to have assumed jurisdiction while the case was pending in the State court, and before hearing and trial could there be had upon the merits of the case. The judges of the State court had taken an oath to support the Constitution of the United States, which was just as binding upon them as upon the Federal judges, who assumed to divest them of their jurisdiction and try the case and discharge the prisoner from the custody of the officers of the State of Kansas. The State court had jurisdiction over every possible question involved in the case, and the court below ought not to have assumed in advance that the judges of the State court were either unable to decide the law of the case correctly, or that they would deny to the prisoner any right guaranteed to him by the Federal Constitution. This, however, was what in effect was done by the court below; and the case was then, as we think, incorrectly decided by the learned

judges sitting as the court. In *Robb vs. Connolly*, 111 U. S. 637, this court said:

"So that a State court of original jurisdiction, having the parties before it, may, consistently with existing Federal legislation, determine cases at law or in equity, arising under the Constitution or laws of the United States, or involving rights dependent upon such Constitution or laws. Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding.' If they fail therein, and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided, to this court for final and conclusive determination."

In *Covell vs. Heyman*, 111 U. S. 182, this court said:

"The forbearance which courts of coördinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but between State courts and those of the United States, it is something more. It is a principle of right and of law, and therefore of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they coëxist in the same space, they are independent, and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void. The regulation of process, and the decision of questions relating to it, are part of the jurisdiction of the court from which it issues."

This was said in a civil case, but the principles therein enunciated would seem to be equally applicable to criminal actions.

In *Ableman vs. Booth*, 21 Howard, 506, which was a *habeas corpus* case, this court established the rule that no State court would be permitted to interfere with the Federal courts in the exercise of their jurisdiction. When the prisoner is held under the process of the United States, and an attempt is made by *habeas corpus* in the State courts to inquire into the legality of the detention, this court held that it was the duty of the officer to return the fact and show his warrant. It is then said:

"But after the return is made and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of *habeas corpus*, nor any other process issued under State authority, can pass over the line of division between the two sovereignties. He is then within the domain and exclusive jurisdiction of the United States. If he has committed an offense against their laws, their tribunals alone can punish him. If he is wrongfully imprisoned, their judicial tribunals can release him and afford him redress."

Why ought not the converse of this to be the rule in all cases wherein it is made to appear that the State court has jurisdiction? And why ought not the Federal courts to keep hands off in a case like this, wherein the State court was clearly within its proper jurisdiction, and simply seeking to make inquiry as to a violation of its own laws, passed in the rightful exercise of its police power? This was and is a suitable case for the application of the rule stated in *Ex parte Crouch*, 112 U. S. 180:

"It is elementary learning, that if a prisoner is in the custody of a State court of competent jurisdiction, not illegally asserted, he cannot be taken from that jurisdiction and discharged on *habeas corpus*

issued by a court of the United States simply because he is not guilty of the offense for which he is held. All questions which may arise in the orderly course of the proceeding against him are to be determined by the court to whose jurisdiction he has been subjected, and no other court is authorized to interfere to prevent it. Here the right of a prisoner to a discharge depends alone on the sufficiency of his defense to the information under which he is held. Whether his defense is sufficient or not, is for the court which tries him to determine. If in this determination errors are committed, they can only be corrected in an appropriate form of proceeding for that purpose. The office of a writ of *habeas corpus* is neither to correct such errors, nor to take the prisoner away from the court which holds him for trial, for fear, if he remains, they may be committed. Authorities to this effect in our own reports are numerous. (*Ex parte Watkins*, 3 Pet. 202; *Ex parte Lange*, 18 Wall. 163, 166; *Ex parte Parks*, 92 U. S. 18, 23; *Ex parte Siebold*, 100 U. S. 371, 374; *Ex parte Virginia*, id. 339, 343; *Ex parte Rowland*, 104 U. S. 604, 612; *Ex parte Curtis*, 106 U. S. 371, 375; *Ex parte Yarbrough*, 110 U. S. 651, 653.)"

In *Ex parte Royal*, 117 U. S. 254, this court adopted for its own guidance the rule which we think the Circuit Court should have followed. The writ in that case was asked upon the ground that the statute under which the petitioner was arrested and held in custody was repugnant to the Constitution of the United States, and consequently that he was restrained of his liberty in violation of that Constitution. This court said:

"The application for the writ must be denied. It is sufficient to say that if this court has power, under existing legislation, and upon *habeas corpus*, to discharge the petitioner, who is in custody, under the process of a State court of original jurisdiction, for trial on an indictment charging him with an offense against the laws of that State — upon which it is not necessary to express an opinion — such power ought not, for the reasons given in the other cases just decided, to be exercised in advance of his trial."

The same rule was applied by this court in the case of *Ex parte Fonda*, 117 U. S. 518. In denying the writ the court said:

"No reason is suggested why the Supreme Court of the State may

not review the judgment of the Circuit Court of the county upon the question which is raised as to the application of the statute under which the conviction has been had, to embezzlements by the servants and clerks of national banks, nor why it should not be permitted to do so without interference by the courts of the United States. The question appears to be one which, if properly presented by the record, may be reviewed in this court after a decision by the Supreme Court adverse to the petitioner."

In *Ex parte Royal*, 117 U. S. 241, the action of the circuit court below in denying the writ under circumstances analogous to those set out in the record in this case, was affirmed by this court. It is held in the opinion that it was within the power of the court below to accept or refuse the jurisdiction tendered by the application for the writ; but it is stated that the court's discretion "should be exercised in the light of the relations existing under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that these relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution." Elsewhere in the opinion it is said:

"In *Taylor vs. Carryl*, 20 How. 583, 595, it was said to be a recognized portion of the duty of this court—and, we will add, of all other courts, National and State—'to give preference to such principles and methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may cooperate as harmonious members of a judicial system coëxtensive with the United States, and submitting to the paramount authority of the same Constitution, laws, and Federal obligations.'"

In the light of these authorities, the Federal court ought to have remanded the prisoner and permitted the State court, in the due and orderly course

of legal proceedings, to retain its jurisdiction theretofore lawfully acquired, and to investigate the alleged charge of a violation of the State laws. *United States vs. Fiscus*, 42 Fed. Rep. 395.

We are aware that in the *Neagle case*, 135 U. S. 1, some language is used by this court in sustaining the jurisdiction of the Circuit Court below, that would seem to modify the authority of the foregoing cases to the extent of approving and confirming the action of the Circuit Court in accepting the jurisdiction and hearing the case upon its merits and discharging the prisoner.

That is an exceptional case. An officer of the United States was called upon to answer a criminal charge lodged against him before a justice of the peace for a homicide caused by him while in the discharge of an important and responsible duty delegated to him by the authority of the President of the United States through the head of the Department of Justice. It consisted in the protection of one of the honored justices of this court from personal injury and probable assassination while in the discharge of his official duties upon the circuit.

The Circuit Court rightly entertained jurisdiction of the *habeas corpus* proceeding on behalf of the United States officer, and correctly decided the case. Its action was rightfully approved by this court. We do not understand from the opinion in that case that this court intended to reverse, modify,

or belittle the authority of the foregoing cases in their application to instances like the one at bar.

## II.

Is the Wilson law unconstitutional? Did Congress exceed its power in the enactment of the law of August 8th, 1890, relating to intoxicating liquors?

The law in question is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

Is this a law which this court will be compelled to declare void because in contravention of the Constitution of the United States?

In *Bowman vs. Railway Company*, 125 U. S. 507, this court held that intoxicating liquor might freely be imported from one State into another regardless of the statutes of the State into which the liquor was taken regulating such importation. This decision was based upon the proposition therein stated, that the absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free and unrestricted, and independent of State

laws. It was further held in that case that it is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled.

In *Leisy vs. Hardin*, 135 U. S. 100, this court went one step further in protecting the importation and sale of intoxciating liquor transferred from one State into another. It was there held that in the absence of Congressional permission to do so, the State has no power to interfere with the importation and sale of intoxicating liquor by the foreign or non-resident importer until such importer has made a sale of the intoxicating liquor, providing he kept and sold the same in the original packages in which it was imported. This decision was based upon the proposition that until Congress otherwise declared, the right of importation carried with it by necessary implication the right to sell, and that until a sale had been made, in the absence of Congressional action declaring otherwise, Congress by non-action had in effect declared that the right of the importer to make such sale of the intoxicating liquor was sacred and paramount to the right of the State to protect its citizens from the admitted evils of intemperance by license or prohibitory laws.

It is unnecessary to point out wherein we think

the court was in error in deciding this case. It is enough to say that the court did so decide.

The immediate effects of this decision were unfortunate and disastrous in the extreme. The prohibition States of Kansas and Iowa, and certain of the license States, were invaded by liquor dealers from other States who resorted to the shift and device of bringing into the State intoxicating liquor in so-called "original packages" containing as small a quantity as a half-pint of liquor, and freely sold the same to all who would purchase, in absolute defiance and disregard of the laws of the State in which the sales were made. The State of Kansas was an especial sufferer from this whisky invasion by the liquor dealers of Missouri, Colorado, and Nebraska. "Original package" houses, as they were called, for the sale of intoxicating liquor in large and small quantities under the authority of this decision in *Leisy vs. Hardin*, were opened in nearly every city, town and hamlet within the State. A carnival of drunkenness and free whisky existed in Kansas from and after the decision in *Leisy vs. Hardin* until the enactment of the law in question.

In justice to the distinguished jurist who presides over this court, and such of the associate justices as concurred in that decision, it should be said that they apparently foresaw the advantage that would be taken of the decision by the wholesale liquor trade to inflict its wares upon the people of

States opposed thereto; and in no less than five different places in the opinion pointed out the remedy from the evil effects which would inevitably follow from the decision. This remedy, as thus repeatedly pointed out by this court, was to be found in an appeal to Congress. No less than five times in the opinion was it suggested by this court that Congress has the power to permit application of the State laws regulating and prohibiting the sale of intoxicating liquors to original packages imported from another State the same as to other intoxicating liquors. If words mean anything, the opinion of this court has already been expressed in language that cannot be mistaken upon this proposition.

We invite attention to these several utterances of the court as to the power of Congress. At page 110, after referring to the fact that ardent spirits are subjects of exchange, barter and traffic, and are so recognized by the usages of the commercial world, the laws of Congress, and the decision of courts, this court makes use of the following language:

"Being thus articles of commerce, can a State, *in the absence of legislation on the part of Congress*, prohibit their importation from abroad, or from a sister State? or when imported prohibit their sale by the importer?"

At page 119 it is said:

"The conclusion follows that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States cannot exercise that power *without the assent of Congress*, and, *in the absence of legislation*, it is left for the courts to determine when State action does or does not amount to such exercise."

At page 123 it is said:

"*The responsibility is upon Congress*, so far as the regulation of interstate commerce is concerned, *to remove the restriction upon the State* in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

At page 125 of the opinion it is said:

"To concede to a State the power to exclude, directly or indirectly, articles so situated, *without Congressional permission*, is to concede to a majority of the people of the State, represented in the State Legislature, the power to regulate commercial intercourse between the States."

At page 124 it is said:

"Under our decision in *Bowman v. Chicago &c. Railway Co.*, supra, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time, we hold that *in the absence of Congressional permission to do so*, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or non-resident importer."

Not only do we find these intimations and utterances of the court as to the powers of Congress running all through the decision in the case of *Leisy vs. Hardin*, supra, but we also find similar language in *Bowman vs. Railway Co.*, 125 U. S. 507, where it is said:

"So far as these regulations made by Congress extend, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by the States in particular cases, by the *express permission of Congress*."

In the case of *Lyng vs. Michigan*, 135 U. S. 167, we find the following:

"The same rule that applies to the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products, natural or manufactured, of any State, applies to all commodities in which a right of traffic exists, recognized by the laws of Congress, the decisions of courts,

and the usages of the commercial world. *It devolves on Congress to indicate such exceptions as in its judgment a wise discretion may demand under particular circumstances.*"

In *Stoutenburgh vs. Hennick*, 129 U. S. 148, we find the following:

"A State statute requiring persons soliciting the sale of goods on behalf of individuals or firms doing business in another State to pay license fees for permission to do so, is, *in the absence of Congressional action*, a regulation of commerce in violation of the Constitution."

These repeated utterances of this court, carefully and deliberately made, establish the authority of Congress to grant to the States permission to regulate the sales of intoxicating liquor in original packages imported from one State into another to the same extent and in the same manner as if the liquors were produced in the State where sold.

This the Wilson law does. It does nothing further. It is a regulation of commerce, uniform and general in its operation, in that it subjects all intoxicating liquors imported from one State into another to the operation of the laws of the State into which the liquors are taken, immediately upon their arrival in such State. The laws of the States are different. Liquors thus imported will be subject to one kind of laws in a license State, and another kind of law in a prohibition State. But the want of uniformity in State laws is no greater in its dealings with intoxicating liquors than in its dealings with many other matters. This regulation of commerce, however, provides a uniform rule by subjecting this particular class of interstate commerce to the State laws at the same instant of time and upon

the happening of the same event, *i. e.*, upon the arrival of the intoxicating liquor in the State, and without waiting for the first sale thereof to be made in the original package in which it was imported.

Prior to the enactment of the Wilson law, this court had decided the law to be that until Congress should otherwise declare, the right to import carried with it the right to sell, and that the importation did not cease until a sale had been made. Congress, by the Wilson law, has now declared the law to be that the right to import does not carry with it the right to sell intoxicating liquor regardless of State laws. Congress now declares that the importation ceases when the intoxicating liquor arrives within the State.

It is not for this court to say whether Congress acted wisely or unwisely in making this regulation of interstate commerce. We think it acted wisely. We think it is a suitable and salutary regulation of interstate commerce in intoxicating liquors. But our opinion upon this matter has no significance; neither is it of significance to this court whether this act of Congress was well or ill advised. The only inquiry open to this court is, whether or not Congress has the power to regulate interstate commerce in this way. The answer to the inquiry is to be found in the Constitution. The grant of power to Congress to regulate commerce among foreign nations, and between the States, is without limitation, other than the good sense, judgment, and dis-

cretion of Congress itself. The constitution does not require that the regulation of interstate commerce shall be uniform throughout the several States. But if it did, this statute is not open to objection upon that account. Undoubtedly this grant of power was given to Congress upon the assumption that there would be greater uniformity in the regulations of interstate commerce by Congress, than there would be if left to the several States; but the framers of the Constitution did not see fit to ingraft into it any limitations by way of pointing out in what manner, and to what extent, Congress should regulate this commerce. The whole matter is simply delegated by the Constitution to Congress. *In re Reckerford*, 1 Dillon, 45.

In the absence of any restrictions to be found in the instrument, it would appear that the only inquiry that could properly be made as to the Wilson Bill is whether or not the bill is a regulation of commerce between the States. This conceded, all else follows.

The pivotal point in the case of *Leisy vs. Hardin* was the determination of the precise time when the act of interstate commerce ended. This court held that it did not necessarily cease with the bringing of the imported articles into the State; that it did not end until the imported articles had become mingled with the common mass of property in the State; and that this commingling of it with the common property did not take place until the

importer had either broken the original package or had transferred the original package by sale to some one else.

This holding and decision of the court was based upon the proposition that until the act of interstate commerce had been fully completed and the importation ended, and the imported article considered mingled with the common mass of property in the State, that the whole subject was exclusively within the power of Congress, and therefore wholly outside of the operation of the State laws. The law was declared to be in the same condition it would have been if there could then have been found upon the statute books an act of Congress which in terms declared that the right of importation shall be free from the effect and operation of all State laws, and shall not terminate until the importer has either himself voluntarily broken the original package, or has sold it to some one else.

Following this declaration of the law, comes in the Wilson law, which, in effect, declares the importation shall be free and independent of the effect and operation of the State laws, but that the importation ceases, and the act of interstate commerce ends, so far as intoxicating liquors are concerned, the instant the liquor has been brought into the State. The only change, therefore, in the law is the declaration by Congress that the act of interstate commerce ends with the bringing of the liquor into the State, instead of as formerly that it ended with

the first sale of the liquor by the importer in the original package.

Congress has no authority to regulate or control the domestic or internal commerce of a State. As to any intoxicating liquor or other commodity imported from one State into another, Congress has no authority except while the importation is in progress, and while the act of interstate commerce is *in esse*. While the act of interstate commerce is in being, the authority of Congress is paramount. The moment the act of interstate commerce is ended, the power of Congress ceases. The authority of the State then becomes paramount. The authority to determine when the act of importation shall cease is a regulation of commerce, and therefore within the control of Congress. With the enactment of the Wilson law, Congress determined this matter as to intoxicating liquors. The law, therefore, is not unconstitutional.

It is elementary law that the judicial department of the Government will not render the acts of the legislative department nugatory by declaring a law duly enacted by Congress to be unconstitutional, and therefore void, except it be clearly so. The presumptions are all in favor of the validity of the act of Congress. This court will indulge in no strained construction, nor undue subtlety or refinement of speech, for the purpose of overthrowing an act of Congress upon the ground of its unconstitutionality. (*Fletcher vs. Peck*, 6 Cranch, 87.)

The rule is stated by Chief Justice MARSHALL, as follows:

"The question whether a law be void for its repugnancy to the Constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

This rule has never been departed from by this court.

Before leaving this branch of the case, it will not be improper to call the attention of the court to the fact that the statute in question was not inadvertently passed, and without due consideration of the rights and powers of the legislative department of the Government. During the discussion both in the Senate and House of Representatives, the constitutionality of the measure was clearly presented and duly considered prior to the enactment of the law. The opinion of many of the ablest constitutional lawyers of this nation, who are members of one or the other houses of Congress, were freely stated during the pendency of the bill, and the large weight of authority, so far as such expressions of opinion may be considered as authority, was largely in favor of the constitutionality of the Wilson law.

Hon. Joseph R. Reed, of Iowa, who was formerly an honored member of the Supreme Court of his

State, in his argument in the House of Representatives on July 18, 1890, makes use of the following language:

"The objection that is urged against this measure is, that it would be a relinquishment by Congress of the power conferred upon it by the Constitution; that it would be a delegation to the State of power that is conferred upon Congress, namely, the power to regulate commerce among the States. I take an entirely different view of the question. I concede at once, as every lawyer will concede, that Congress cannot delegate any of the powers of government either to the States or to any other power. It cannot by Congressional enactment enlarge any of the powers of the State. Everybody concedes that; but my position upon this question is that this would be an exercise by Congress of the power conferred upon it by the Constitution. The power of Congress is 'to regulate commerce with foreign nations, and among the several States.' The grant is in general terms; the whole subject as to the manner and time of exercising this power is left to the discretion of Congress. There is neither direction nor limitation as to these subjects, but the Congress has full discretion as to when it will exercise the power and how it will exercise it. It may adopt any regulation which to it appears necessary and just, and which in its judgment will be beneficial to the people of the State.

"Now, what is regulation within the meaning of the Constitution? I assert that any enactment that necessarily has the effect to prescribe a rule for the government of traffic of that kind, is a regulation within the meaning of the Constitution. These bills both prescribe a rule for the regulation of commerce of that character, that rule being that when the property is taken within the State and there held for sale, it shall be subject to such regulations as the State has enacted for the government of the traffic in articles of like character. That would be a direct regulation by Congress; as certainly and clearly a regulation as though we were to embody in a general statute the provisions of the Iowa prohibitory law and make it applicable to the traffic in intoxicating liquors imported into that State, either from foreign nations or from other States.

"I think no one would doubt the power of Congress to enact such a law, that is, a law providing that when intoxicating liquors are carried into that State as articles of commerce, they shall be sold only for the purposes prescribed by the statutes of the State, and under restrictions similar to those contained in the law of the State. The pending bill would simply reach the same result in another way. Instead of prescribing, as Congress might in specific terms, the restrictions which shall be imposed upon the traffic, its effect would be to subject it to those restrictions. So that in either case the same relief would be reached. The one enactment would as certainly operate as a regula-

tion of the traffic as would the other." (Congressional Record, July 20, 1890; vol. 21, No. 177, p. 8084.)

Senator J. Z. George uses the following language:

"The undersigned, though yielding obedience to the decision of the court, entertains the opinion that the States have, under the Constitution, the power yielded by this bill, and that this power in the States is necessary for their welfare and even to the proper working of our complex political system.

"It is certain that Congress cannot exercise the police power of regulating the traffic in intoxicants within the several States, and the Supreme Court has denied this power to the States, except as to liquors manufactured within their respective limits. So that unless we agree that Congress shall grant this power to the several States, as decided by the Supreme Court may be done, then there remains no power by which this police regulation may be made or enforced, as far as imported liquors are concerned, whilst they are in the original packages.

"The Supreme Court has assented to the power of the several States to regulate, control and prohibit the sale of intoxicants manufactured within their respective limits as a necessary police power, but denies this power as to intoxicants imported from another State, or from a foreign country. The result is, that however harmful a State may determine the traffic in intoxicants to be, the power to prohibit it is restricted to such liquors only as are manufactured in its borders. Foreigners and citizens of other States may, under this new law, invade a State with their intoxicants, dispose of them in their original packages, and thus carry on a business which the State has determined is destructive to the peace and good order of the community, and to the health and morals of the people.

"In this singular and anomalous condition has the State been placed by the decision of the Supreme Court.

"The court, however, has allowed a means of correction, by affirmative action on the part of Congress, granting permission to the State to deal with imported intoxicants in the same way, and to the same extent, as they may deal with liquors manufactured within their respective limits.

"The undersigned believes the rule to be to concede the power to the States as a power reserved under the Constitution, and not require them, as the Supreme Court has decided, to hold it as a Congressional grant, and therefore subject to the will of Congress to give it in the first instance, and afterwards to withdraw it. Yet, as he deems it a power reserved to the States, under the Constitution, and one necessary to the maintenance of a rightful authority by the States over their own domestic affairs, he feels constrained to support the bill, since only by such legislation can the States, under the decision of the Supreme Court, exercise their rightful and necessary jurisdiction over a subject of the utmost importance to their welfare.

"The undersigned expresses no opinion as to the propriety of the exercise of this power by the several States. That is not a matter for Congressional consideration. Whether there shall be a free or regulated traffic in intoxicants, or total prohibition, is a matter for each State to determine for itself. It is not a matter either of Congressional action or advice.

"Believing that the Supreme Court, by its decision in *Leisy & Co. vs. Hardin*, erroneously denied to the States the power conceded to them by this bill, the undersigned gives support to the bill as the only means left whereby the States may exercise their rightful authority over a matter of the utmost gravity and concern to them. The result attained by this action on the part of Congress is the same, so long as Congress shall yield the power, as if the Constitutional power of the States to act as they saw proper had been recognized. It is a matter of sincere regret that the States are compelled to rely on Congress for a grant of this essential power. It is also to be deplored that the Constitution has been authoritatively construed so as to reverse the well-recognized rule that Congress is the grantee of power from the State, and is not the source of power which may be parceled out at its will to the States. Yet, finding the Constitution thus construed as to this particular matter by the tribunal which is appointed as the final arbiter in such matters, the States must submit to hold the power at the will of Congress until such time as the court, upon being better advised, shall reverse its action." (Congressional Record, May 21, 1890; vol. 21, No. 129, p. 5210.)

## Senator Evarts, of New York, said:

"If this last delivery from the Supreme Court of the United States by a majority conclusion, stands before the public at all in their apprehension and appreciation of its conclusions, it is that it is entirely competent for Congress to say whether or not under the commercial clause the introduction from abroad of imported liquors or the introduction from other States into a State shall operate to reduce the police regulation over these prescribed articles, simply because they have come from abroad. I think, therefore, it is clearly our duty to act." (Congressional Record, May 22, 1890; vol. 21. No. 130, p. 5303.)

## Senator Hoar, of Massachusetts, said:

"Now, the Supreme Court of the United States, both majority and minority, in the decision which has been under discussion, have declared their opinion. Of course it is an *obiter dictum*, as the Senator from Missouri has said; but the concurrent opinion of these nine great lawyers on a grave constitutional question before them which they are considering in all its relations, even if not essential to the judgment which they are about to render, is entitled, I suppose, to the highest respect, a respect only surpassed by that which we owe to the constitutional judgment of the court itself.

"What is it they have said Congress may do to remedy this difficulty? They have not declared that we may delegate power to the States of this Union. They have not declared that the reserved power which the Constitution leaves to the States or to the people thereof respectively can be enlarged or abridged one whit by act of Congress. They have not undertaken to say that there can be any legislative action of a State of this Union (unless, perhaps, it relates to some matter of national prosperity which we may cede to them) which can derive the least vitality from any denial of our own power or affirmation of theirs by legislation. What they have undertaken to say is this—and it is what was suggested during the remarks of the Senator from Missouri by the honorable Senator from Delaware—they have undertaken to say that, recognizing the complete and exclusive control of Congress over interstate and international commerce, Congress may also by legislation declare that certain subjects shall not be for legislative purposes, treated as subjects of interstate commerce, and that the question whether a particular contract is a contract of interstate or international commerce within the legislative power, is not to be determined by the Supreme Court, as a question of absolute fact of which they take judicial notice, but may be determined by the Congress of the United States in declaring that for all legislative purposes this shall not be considered as within the domain of interstate commerce.

"Whether that is sound or not, it is the opinion of the judges of the Supreme Court of the United States, and, as I understand, it is an opinion affirmed and reaffirmed almost from the beginning of our judicial history." (Congressional Record, May 21, 1890; vol. 21, No. 129, p. 5214.

Senator Edmunds said:

"The objection that has been made to this bill is, that we are delegating it to a State. I deny the proposition. I say that by this bill, although its mere terminology is not what I would have adopted, but in substance it comes to the same thing, Congress is undertaking to regulate the traffic among the States of this thing by saying: 'We employ the agency of the people through its legislative authority, of the State of Missouri, for instance, to say whether it is wise to admit this thing in the community that is there, from the State of Illinois, or not.' We say to the State of Vermont: 'We employ you as the agent of Congress in the regulation of this traffic to determine whether the condition of things as to the state of public morals there will warrant that thing.'

"Congress, therefore, instead of delegating a power, is exerting the same power in respect of internal commerce that it has always exerted in respect of external commerce, to authorize somebody to determine how and under what conditions this commerce, if you call it that, shall be carried on." (Congressional Record, May 21, 1890; vol. 21, No. 129, p. 5218.)

III.

Did the Wilson law from and after its enactment by Congress become effective and applicable to the then existing laws of the several States regulating the sales of intoxicating liquors; or would it require a reënactment of the license laws and the prohibitory laws of the States in order to make them applicable to sales of intoxicating liquor by the importer in original packages, before any relief could be had from the unrestricted and unregulated sales of such intoxicating liquor under the authority of *Leisy vs. Hardin?*

The court below held that the law in question afforded no present relief in the State of Kansas, and that the condition of things so far as the unrestricted sales of intoxicating liquor in original packages was concerned, is exactly the same now since the enactment of this law as it was prior thereto. It was freely conceded in the argument on behalf of the petitioner, that this evidently was not the intention of Congress, but that it was the legal effect of what Congress had done.

The court below construed the mandatory language of the act wherein the words used are, "shall be subject to the operation of the laws of the State," as being used by Congress in a permissive sense only. This, as we think, was an unnatural, constrained, and erroneous construction of the language of the law. To say that the intoxicating liquors

"shall be subject to the laws of the State," is not equivalent to saying "they may be made subject to the operation of the laws of the State thereafter to be enacted." This, however, is the construction which the court placed upon the law. We think every canon of the law applicable to the construction of this statute was violated. The language used by Congress was plain, unambiguous, and needed no construction other than that first and most elementary rule that the phrases and sentences employed should be construed according to the rules of grammar, and words permitted to have their usual and ordinary meaning, thus giving to the law its intended effect, and thus giving to the people in the several States the benefit of a remedy for the then existing ills, which Congress intended they should have. It was the then existing license and prohibitory laws of the several States that Congress had in mind at the time of the enactment of the statute. By the passage of the Wilson law Congress intended to give, and as we think did give, its permission that the then existing laws of the States might be extended so as to cover the sales of intoxicating liquor imported into a State, and sold in original packages. Whatever restriction or regulation the law threw around the sale of domestic liquors produced in a given State, were, immediately upon the passage of the Wilson law, permitted to be thrown around the sales of intoxicating liquors imported into the State. It was intended that

original packages of intoxicating liquors should be placed upon the same footing as other intoxicating liquors. It would be difficult to conceive how Congress could have chosen words better adapted to carry out this intention than those which are found in the law. To construe the language otherwise is to force a construction.

The sections of the Kansas statute violated by the prisoner are as follows:

"Any person or persons who shall manufacture, sell or barter any spirituous, malt, vinous, fermented or other intoxicating liquors, shall be guilty of a misdemeanor, and punished as hereinafter provided: *Provided, however*, That such liquors may be sold for medical, scientific and mechanical purposes, as provided in this act.

"It shall be unlawful for any person or persons to sell or barter for medical, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggist permit therefor from the probate judge of the county wherein such druggist may be doing business at the time," etc.

"Any person or persons without taking out and having a permit to sell intoxiating liquors, as provided in this act, or any person not lawfully and in good faith engaged in the business of a druggist, who shall directly or indirectly sell or barter any spirituous, malt, vinous, fermented or other intoxicating liquors, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days."

It was contended upon the hearing in the court below that in *Leisy vs. Hardin*, this court had decided the prohibitory law of Iowa to be unconstitutional and void, and that such decision was applicable to the Kansas prohibitory law, and that, therefore, the sections of the Kansas statute above quoted must, by the same authority, be declared unconstitutional and void in so far as a dealer in intoxicating liquors

in the original packages was concerned; in other words, that there was no law and could be no law in existence making such business a crime. The contention was that the prohibitory law of the State of Kansas, where it touched upon interstate commerce, was no law at all at any time prior to or since the enactment of the Wilson law.

This view was adopted by the court below in its most sweeping sense. In order that this court may be advised of the view taken by the court below, we quote from the opinion the following:

> "How then can the act of Congress in question have the effect and operation claimed for it by the attorneys for the State? For it must be kept in mind that a legislative act in conflict with the Constitution is not only illegal or voidable, but it is absolutely void. It is as if never enacted, and no subsequent change of the Constitution removing the restriction could validate it or breathe into it the breath of life."

The decision in this case was rendered by Hon. C. G. Foster, Judge of the United States District Court for the District of Kansas, and Hon. John F. Phillips, Judge of the United States District Court for the Western District of Missouri, sitting together at Topeka as the Circuit Court for the District of Kansas.

A complete answer to these views adopted by Foster and Phillips, JJ., may be found in the ruling and decision of Hon. Henry C. Caldwell, the presiding justice of the same court, in a decision rendered by him *In re H. M. Van Vliet*, October 31, 1890. The *Van Vliet case* originated under the Iowa prohibitory law, and was a *habeas corpus*

proceeding in every respect identical with this Rahrer case. The petitioner in that case, subsequent to the passage of the Wilson Bill, sold intoxicating liquors as the agent of a foreign, or non-resident importer, in the original package, in violation of the laws of Iowa; while Rahrer, the petitioner in this case, in a similar manner, sold intoxicating liquors in the original package, in violation of the Kansas law. In the Iowa case the petitioner was remanded by Judge CALDWELL, while in the Kansas case the petitioner was discharged by Judges PHILLIPS and FOSTER.

Referring to the Iowa prohibitory law, and the contention of the prisoner in the *Van Vliet case*, Judge CALDWELL disposes of the entire argument, and the contention of prisoner's counsel, in the following able and comprehensive passages, taken from the written opinion handed down by him in the *Van Vliet case:*

"It is said the Supreme Court declared these laws to be unconstitutional, in so far as they prohibited the sale of liquor by the importer or his agent in the original packages, and that Congress could not, in the language of the learned counsel, 'vivify a dead statute.' There are two answers to this contention. The first is, the act of Congress relegates the original package of liquor, on its arrival in the State, to the laws of the State passed in the exercise of its police powers; and there is not now, and never has been, any doubt of the validity of those laws. It is not the laws of the State, but the original package, that is 'dead.' No part of the Iowa law is 'dead.' What was decided by the Supreme court was this: That the Iowa law was broad enough in its terms to embrace all liquors, and all sales of liquors by every person; but that this law, under the Constitution of the United States, was inoperative on liquor imported into the State as long as it remained in the original packages, and could not be applied to the sale of liquor in the original package by the importer, 'in the absence of Congressional permission to do so;' and that any application of the law to original

packages, in the absence of Congressional permission, was unconstitutional, and an invasion of the constitutional rights of the importer.

"There is, therefore, no foundation for the broad statement sometimes made, but not made by the learned counsel in this case, that 'the Iowa liquor law was declared to be unconstitutional and void.'

"The court did not declare the statute of Iowa 'void,' but in legal effect declared its extension or application to liquor in the original packages in which it was imported, in the absence of Congressional sanction, was unconstitutional.

"Every written law has its implications, which are as much a part of it as what is expressed.

"It has been said, that in view of the decision of the Supreme Court, it must be held that one of the implications of the Iowa statute, at the time it was passed, was that it should not apply to original packages, and that this implication adheres to it, and can only be got rid of by reënactment of the statute under existing conditions.

"Undoubtedly this statute, like all statutes, had its implications, but it had no such implication as is claimed. If the statute had any legal implication on this subject, it was that the act should not be operative on original packages, or the sale thereof by the importers, until Congress should give its consent thereto. That consent has been given in plenary terms. It was only by necessary implication that the right of the importer to sell his original packages was upheld. (*Bowman v. Chicago &c. Railway Company*, 125 U. S. 499.)

"An act of the Legislature will not be declared unconstitutional, in whole or in part, where the legal implications fairly deducible from the act will harmonize it with the Constitution. A statute is neither unconstitutional nor void for not containing an exception or qualification which the law will imply. Its operation will be restrained within constitutional limits, but the act itself will not be declared void.

"It was always competent for Congress to invest the State with authority to apply its police regulations to liquor upon its 'arrival in such State,' for sale or consumption, or what is the same thing, to declare, as the act of Congress does, that such liquor shall upon arrival in the State be subject to the operation and effect of the laws of the State enacted in the exercise of its police powers.

"It is not essential that the act of Congress should have been passed before the act of the Legislature.

"What Congress can authorize to be done it may ratify after it is done.

"It is said by the Supreme Court of the United States that 'a legislative ratification of an act done without previous authority is of the same force as if done by preëxisting power, and relates back to the act done.' (*United States v. Arredondo*, 6 Peters, p. 714.)

"Such consent or ratification is equivalent to an original authority, and operates precisely as though authority had previously been given.

"It is familiar learning that by-laws and ordinances of cities and

towns, which were inoperative or 'void,' for want of legislative power to enact them, are rendered valid and effectual by a subsequent legislative approval or ratification. (Dillon on Municipal Corporations, 4th ed., sec. 79.)

"An act of the Legislature, passed in the exercise of the police power of the State, inoperative on liquor in the original packages, when passed, for want of Congressional license, is rendered operative and effectual by a subsequent act of Congress declaring such liquor shall be subject to the State law. Such an act removes the impediment to the enforcement of the law against such packages, and has the same effect as a precedent authority of Congress, to pass it. Such a law does not of course give to the State law a retroactive operation so as to punish a violation of its provisions before its adoption or ratification by Congress."

The foregoing extracts from Mr. Justice CALDWELL are adopted by us as a clear and satisfactory exposition of the law applicable to the case at bar.

The Kansas prohibitory law has heretofore been considered by this court, and held to be constitutional.

*Foster v. Kansas*, 112 U. S. 201.
*Mugler v. Kansas*, 123 id. 623.
*Kansas v. Ziebold*, 123 id. 623.

The statute in question is a remedial statute, and should therefore be liberally construed so as to carry out and make effectual the admitted intention of Congress to make it immediately operative. To require a reënactment of the State laws before permitting this statute to become effectual, would be to thwart the will of the Legislature, and to postpone to an indefinite and delayed future the operation of a remedial statute which Congress intended to become effectual upon its approval by the

President. Such a construction is not and should not be favored by the courts.

*United States v. Freeman*, 3 Howard, 565.
*Wilcott v. Pond*, 19 Conn. 597.

It is respectfully submitted that this appeal should be sustained, and the prisoner remanded for trial in the State court.

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Supreme Court U. S.
FILED,
MAR 7 1891
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No. 1529.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1890.

JOHN M. WILKERSON, Sheriff, etc., *Appellant*,
vs.
CHARLES A. RAHRER, *Appellee*.

*Appeal from the Circuit Court of the United States, District of Kansas.*

## Brief for Appellee.

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## BRIEF FOR APPELLEE.

### STATEMENT OF THE CASE.

On August 9th, 1890, appellee was arrested, by the authority of the State of Kansas, for a sale of liquor in the original package in which it had been received by him from the State of Missouri. The statute of Kansas in question prohibits all sales of liquor, except upon certain conditions, with which appellee did not comply.

The law of congress involved in this case and known as the Wilson bill is as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any state or territory, or remaining therein for use, consumption, sale or stor-

age therein, shall upon arrival in such state or territory be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom, by reason of being introduced therein, in original packages or otherwise."

## Questions Involved.

The question presented for the consideration of the Court is, what effect, if any, had the passage of the Wilson bill upon the Kansas statute?

If the Wilson bill had no effect upon the statute, the controversy is at an end. For before the passage of the act of congress, the statute had been denied the force and validity of a law, so far as it relates to inter-state commerce, by the decisions of this court in the cases of *Bowman* vs. *Railroad Co.*, and *Leisy* vs. *Hardin*, referred to hereafter, because in conflict with the commerce clause of the constitution of the United States. Whatever power or virtue that statute may possess in that regard is, therefore, claimed for it under the Wilson bill, which, according to appellant's contention, imparts to it an existence to which it could lay no previous claim. Appellee, on the other hand, respectfully submits:

1. That the Wilson bill, whatever its result upon future state legislation, enacted in pursuance of its provisions, can have no effect upon the statute, theretofore passed, without authority, by the state.

2. That the Wilson bill is unconstitutional and void, in that it also violates the commerce clause of the constitution.

As to the first point, while it is not uncommon for a legislative body to cure an irregularity by subsequent legislation, it is difficult to understand how an enactment, absolutely void and without any legal existence whatever, can be cured or validated. Equally difficult is it to understand how a void statute, created by a legislative body, can be validated, either directly or indirectly, by another body, acting under a distinct sovereignty. If this can be done, the Wilson bill creates a precedent for future legislation now here else to be found.

The claim that, by the passage of the Wilson bill, the state statute was made a law of the United States by adoption, is open to the same objection. A statute, void from the time of its enactment, and without any legal existence whatever, is not a fit subject for adoption. If it be said that, so far as it applies to the internal commerce of the state, the statute is valid, and so a fit subject for adoption, the answer is that there is no rule or system of legislation which enables one body, by adopting a statute created by another body for a certain purpose, to create another law, differing in every material respect from its original in power, effect, and consequence. If, however, the statute has been made a federal law by adoption, then an offence against it as a federal law is cognizable only in the federal courts, no claim being made under it as a state law, and appellee was rightfully discharged from the custody of the state authorities.

The invalidity of the Wilson bill is placed upon the ground that the commercial power of congress, granted by the constitution, so far as it relates to commerce of a national character, admitting of a uniform system of regulation, is confided to the exclusive control of con-

gress, and its regulation by the states is as clearly inhibited as if express words of prohibition were addressed to them by the constitution. That the article of commerce under consideration comes within this definition, and is, therefore, placed by the constitution beyond the jurisdiction of the states. That being so protected by the constitution, any warrant or authority to the states to regulate it, by whatever body conferred, is in effect but a license to violate the constitution.

Previously to the passage of the Wilson bill, the statute had been declared void as a regulation of inter-state commerce. The Wilson bill, attempting to confer the jurisdiction denied by the decision of the court, is, therefore, an attempt to vest the states with a power to regulate inter-state commerce.

It is argued that this is not the design of congress in enacting the Wilson bill, but that it is in effect an act depriving liquor of commercial properties, and thus bringing it within the police power of the states. To this suggestion there are several answers:

1. It may well be doubted that congress has an arbitrary power to divest a commodity of its commercial character, while recognized as an article of commerce by the usages of the commercial world, and thus deprive it of the protection which the constitution affords. If congress can do this, it is possible for it to divest itself of all commercial power by the employment of the same means.

2. But congress has not done this. On the contrary it recognizes it to-day as a fit subject of commerce and allows its passage and traffic freely among most of the states of the union, in any event. What congress has done is to allow the states to determine the question

whether it is or is not an article of commerce, and consequently, whether it is or is not a subject for regulation by congress.

3. If this is not a commercial power conferred by congress upon the states, but a police power, the objection to the bill is by no means removed. What power has congress to create a police power for the states, and especially one which it does not itself possess? It is said by the state that congress does not create a new police power in the states, but removes merely its own restrictions and leaves the article to the former police power of the state. This suggestion does not meet the requirements of the case. Congress may remove restrictions so far as its acts are concerned, by repealing them; but cannot remove the restraint imposed by the constitution. It can neither diminish its own power nor increase that of the state. And when it is said that congress only recognizes the former police power of the state, it must be remembered that there was no police power existing after the adoption of the constitution.

While entertaining the highest respect for the national legislature, and appreciating fully the weight and deference properly attached to its acts, we will endeavor to demonstrate that in this instance congress exceeded its power, and, at the same time, we do not ignore the fact that unless the invalidity of the law is established beyond doubt, the state, on this point, must prevail.

## ARGUMENT.

### Jurisdiction of Court to Issue Writ.

Counsel for appellant contends that the Circuit Court ought not to have issued a writ of *habeas corpus*

before appellee's trial in the state courts. As to the jurisdiction of the court to do this, the Royall case, appealed from the Circuit Court, appears to be conclusive. It is there said:

"This court holds that where a person is in custody, under process from a state court of original jurisdiction, for an alleged offense, against the laws of such state, and it is claimed that he is restrained of his liberty in violation of the constitution of the United States, the Circuit Court has a discretion whether it will discharge him, upon *habeas corpus*, in advance of his trial in the court in which he is indicted."

*Ex Parte Royall*, 117 U. S., 241.
*Ex Parte Terry*, U. S., 289.
*Cunningham* vs. *Neagle*, 136 U. S., 1.

This cause comes clearly within the class of cases referred to by the court in the Royall case, as cases not only justifying, but requiring the intervention of the federal courts in the first place. The idea that a federal judge, being clearly of opinion that a petitioner is deprived of his liberty under a state statute repugnant to the constitution, must compel him to await the result of a trial in the state courts, before taking the step which in all probability would eventually be necessary, rests upon no ground which merits a lengthy consideration.

THE COMMERCE CLAUSE OF THE CONSTITUTION.

This clause has been so frequently before the court for construction, and the question as to the extent of the power granted by it to congress and its limitations upon state power have been so firmly established, that a brief recapitulation of some of the leading causes is all that the necessities of this case now require.

In the case of *Gibbons* vs. *Ogden*, 9 Wheat. 1., the court laid down the doctrine that the power granted to congress under this clause was exclusive, and an inhibition upon the states. It is needless to refer to the License cases, in which that opinion was doubted and criticised, as those cases have to that extent been since overruled. The rule finally established, and thereafter and since prevailing, was laid down in the case of *Cooley* vs. *Board of Wardens*, 12 Howard, that as to interstate commerce of a national character, admitting of a uniform system of regulation, the power of congress is exclusive, and that a state enactment thereon is violative of the constitution, whether or no in contravention of an act of congress, being in either case an interference with the power of congress. But that, as to interstate commerce of a local nature, a state may enact laws, which will remain in force until superseded by an act of congress.

Another rule governing the construction of the constitution is that "whenever the terms in which a power is granted to congress, or the nature of the power requires that it shall be exercised exclusively by congress, the subject is as completely taken away from the state legislatures as if they had been expressly forbidden to act on it."

*Sturges* vs. *Crowninshield*, 4 Wheat., 122.

In a recent case, the authorities on these questions were reviewed at length, and their doctrines approved. The court says: "Where the subject matter requires a uniform system as between the states, the power controlling it is vested exclusively in congress, and cannot be encroached upon by the states. But where, in relation to the subject matter, different rules

may be suitable for different localities, the states may exercise powers which, though they may be said to partake of the nature of the power granted to the general government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of congress in effectuation of the general power. *Cooley* vs. *Philadelphia Board of Wardens*, 53 U. S., 12 How., 299."

*Leisy* vs. *Hardin*, 135 U. S., 100.
*Lyng* vs. *Michigan*, Id., 161.
*McCall* vs. *California*, 136 U. S., 104.
*H. & W. R. R.* vs. *Pa.*, Id., 114.
*Minnesota* vs. *Barber*, Id., 313.

As to whether liquor, as an article of inter-state commerce, belongs to the class subject to the exclusive control of congress, or to that which may be regulated by the states, is not an open question. The State of Iowa enacted a statute forbidding common carriers to bring liquors into the state, unless consigned to a party holding a permit from the local authorities. The court held that the article in question belonged to commerce within the exclusive power of congress, and that, as the statute in question was a regulation of such commerce, it was void.

*Bowman* vs. *R. R. Co.*, 125 U. S.

Subsequently it was decided that the right to import liquor into the state—a right which the state had in vain sought to destroy—includes the right to sell it in the condition in which it is imported.

*Leisy* vs. *Hardin*, *supra*.

The statutes of Iowa referred to, and the statutes of Kansas in question, are similar in terms, and, by these

decisions, all must have been alike affected. For, if invalid, they were so from the time of their enactment, and not merely from the date of the decision. The court is, therefore, now called upon to construe a statute declared void prior to the passage of the Wilson bill, for lack of power in the state to enact it.

No other act was thereafter passed by the state; no other resource was at its command. The state power had proved inadequate to the accomplishment of the purpose designed; and unless the statute derives an origin or existence from the Wilson bill, it has no claims to legal force or validity.

EFFECT OF THE WILSON BILL UPON THE STATUTE.

Admitting for the purpose of the argument, that the Wilson bill is a valid enactment, has it any effect upon the existing statute?

The statute in question virtually embraced two provisions, one regulating the internal commerce in liquor, the other applying to imported liquor. The latter was void when passed; but it is claimed that, by virtue of the terms of the Wilson bill, there is now in force a state law prohibiting the sale of imported liquor, and the statute in question is relied upon in support of this contention.

Up to the time of the passage of the Wilson bill, there was no such state law as the one claimed. When the court held the statute to be unconstitutional, so far as it applied to imported liquor, it decided in effect that the statute should never have been enacted, and that in law it never had been enacted. "An unconstitutional act is not a law. * * It is in legal contemplation as though it had never been passed."

*Norton* vs. *Shelby County*, 118 U. S., 425.

No other statute relating to imported liquor having thereafter been passed, there is no state law on the subject; and if, as is claimed, such a law has been created by the Wilson bill, we have here a state law, enacted by congress. Truly an anomaly in the annals of legislation.

If this is the effect of the bill, congress has thereby changed the entire legislation of the state upon the subject; for while before the passage of this bill, only the sale of liquor as domestic commerce was prohibited, and the sale of imported liquor in the original package was a lawful business in the State of Kansas, this bill has created a perfect and complete prohibitory law for the state. Thus congress has, according to this contention, assumed to exert the police power of the state.

It is clear that the Wilson bill subjecting liquor to the police laws of the state, can have no effect upon the statute so far as it relates to imported liquor. In the first place, the language of the bill is that imported liquor shall be subject to the "laws of such state," and this statute, as applied to imported liquors, does not come within that definition, as it is no law. In the second place, the language of the bill is that the commerce in question shall be subject to the operation and effect of the laws of such state "enacted in the exercise of its police powers." The state statutes, as to imported liquor, do not come within that designation. For, as is held by this court, such a statute is not a law enacted by the state in the exercise of its police power; "it is, on the other hand, a regulation directly affecting interstate commerce in an essential and vital point.

*Bowman* vs. *R. R. supra.*

These questions are well considered and illustrated

in the opinion of the Circuit Court in this cause, to which we respectfully invite the court's attention. They are met by his Honor, Judge Caldwell, in the Van Vliet case, cited by counsel for the state, by the following proposition: "It is not essential that the act of congress should have been passed before the act of the legislature. What congress can authorize to be done it may ratify after it is done."

With due respect to the judge, we are constrained to say that this opinion is not based upon a sound theory as to the relation of the United States to the state governments in this regard. He treats the federal government as the principal, and the latter as its agents, while no such relationship was ever contemplated by the framers of the constitution. Hence he proceeds to say: "It is familiar learning that by-laws and ordinances of cities and towns, which were inoperative or "void" for want of legislative power to enact them, are rendered valid and effectual by a subsequent legislative approval or ratification."

Municipal corporations, in legislating, act merely as the agents for the state, from which they derive all their powers. A state, adopting or curing an act of a city, ratifies or validates the act of its own agent. But a state, enacting laws in the exercise of its police power, does not act as the agent of congress, even though the consent of congress may enable it to act. In the one case, it is the act of a municipal agent; in the other, the act of a government, operating under an independent and distinct sovereignty.

The case of the *United States* vs. *Arredondo*, 6 Pet., 714, cited by Judge Caldwell as an authority in support of his position, arose from a ratification by congress of

the acts of its own agents, a body of men appointed by it. While in a case like the one in question, the state, enacting a police law, so far from legislating as an agent of congress, acts under a power which congress itself does not possess.

It may be said that the statute in question in effect contains two provisions, and that the Wilson bill is not designed to revive the provision relating to imported liquors, but seeks merely to extend the operation of the provision prohibiting the sale of domestic liquors, so as to embrace inter-state commerce. If this is its intent, aside from the question as to the constitutional power of congress to do this, the statute is more clearly subject to the objection that congress cannot legislate directly for the states. If the state enacts a law covering one subject, and congress then provides that the state law shall cover another and and an entirely different subject, what is the statute, as changed? Unless it is intended to adopt the state law and thus make it a law of congress, the statute is clearly a new state law, enacted by congress, under the police power of the state. Whatever merit this statute, if existing, may be said to lack in other respects, its claim to novelty cannot be challenged nor refuted.

Judge Caldwell attempts to meet this difficulty by the suggestion that the statute may give rise to the implication that it shall be operative as to inter-state commerce only when congress shall give its assent, and that, upon the giving of such assent by congress, by means of the Wilson bill, the statute at once became operative. This implication does not appear to be warranted by any legal principle governing the construction of statutes. Assuming, for the immediate purpose, that congress has

the constitutional power to remove the restrictions upon the state, as to the regulation of inter-state commerce, yet, until that restriction is removed, the subject is placed by the constitution beyond the jurisdiction of the state; and, until the requisite power is conferred, the state is forbidden by the constitution to act. The only fair presumption, it would appear, is that the state has obeyed the mandate of the constitution, and has refrained from acting until the removal of the restriction upon its power.

Beyond doubt, congress may in certain cases afford a freer scope to the operation of state laws than they could otherwise obtain; but the state laws, so acted upon by congress, must be valid enactments in themselves, and relate to a subject within the control of congress. The past legislation of congress affords a clear demonstration of the methods employed by it to accomplish this purpose. Whenever its legislation concerned a valid state statute, reference was made to it, and it was distinctly recognized as a legal measure. The pilot laws furnish illustrations. On the other hand, whenever a state by its act exceeded its power, but congress, approving the policy which actuacted it, desired to give such a law existence, it made no attempt to validate or ratify the void state statute, but passed a statute in virtue of its own powers, to effectuate the end desired. An illustration occurs in the case of the Wheeling bridge.

A bridge was constructed by the Wheeling Bridge Company, under the authority of a state legislature, and the act was declared void by the court as a regulalation of inter-state commerce. Thereafter congress passed a law legalizing the bridge in express terms, an

entirely ignoring the state statute. The course pursued by congress was precisely the same as if the bridge had been constructed by an individual instead of by the state.

*Pennsylvania* vs. *Wheeling Bridge Company*, 18 How., 460.

Another instance is furnished by the act providing: "That the bridge across the Mississippi river erected by the Albany Bridge company and the Chicago, Iowa & Nebraska R. R. Co., under the authority of the states of Iowa and Illinois, etc., shall be a lawful structure."

*Gray* vs. *Chicago R. R.*, 10 Wall., 969.

As already stated, before the passage of the Wilson bill there was no law of Kansas prohibiting the sale of imported liquor in its original package; there was no power in the state to enact it. Such a law, if there is any, owes its existence entirely to congress; and, as congress cannot legislate for the states, but can only make a state law a federal measure by adoption, the claim is advanced, as a necessary expedient, that congress has adopted the state statute in question.

ADOPTION BY CONGRESS OF THE STATE STATUTE.

In the argument of Judge Reed in the House of Representatives, the legal state of affairs, resulting from the passage of the Wilson bill is described to be virtually "as though we were to embody in a general statute the provision of the Iowa prohibitory law and make it applicable to the traffic in intoxicating liquors imported into that state, either from foreign nations or from other states." And upon this argument, and on the general theory of adoption the state places strong reliance.

How does congress adopt a state law? By manifesting its intention to do so, either by the use of express

words, or by language creating the necessary implication. The former method is the one to which it usually, if not invariably, resorts. To illustrate, in adopting the toll law of Maryland, after reciting the state statutes in its enactment, congress adds: "To which said acts the assent of the United States is hereby given."

*Atchison* vs. *Huddleson*, 12 How., 294.

The same method is employed in relation to acts of other states, referred to in the case last cited.

In the Wilson bill, no words of express adoption are used, and, to establish the claim of the state, recourse must be had to implication. All the inferences to which this act gives rise, appear to oppose that construction.

1. If the statute in question has, by adoption, become a law of the United States, and it has no existence as a state law so far as inter-state commerce is concerned, then an offence against it, committed by the sale of imported liquor in its original package, is punishable only in the federal courts, and the state courts have no jurisdiction in the matter. Yet the federal courts are not empowered by congress to punish the offence. This certainly repels the inference that congress has actually made the statute a federal law, whatever its intention. It may be said that the adoption of the statute by congress included the means provided as a punishment for its violation; but the suggestion is unsatisfactory. Congress has no power to do this. It cannot create a federal law, and allow the state courts to punish its violation. "Congress cannot delegate any part of the criminal jurisdiction of the United States to the state tribunals."

*Houston* vs. *Moore*, 5 Wheat., 69.

Here then was an attempt on the part of the state to punish appellee for violating—not a law of the state,

for as a state law its pretenses had already been denied—but a law of the United States, according to appellant's contention.

As stated, congress cannot, if it adopts a state law, empower the state courts to punish its violation; nor has it authorized the federal courts to enforce it; and it is scarcely supposable that congress would enact a law leaving it optional with its citizens to obey it or disregard it with impunity.

A host of reasons and illustrations can neither strengthen nor weaken this position. If sound, it appears to us to be conclusive against the theory of the adoption of the statute by congress.

2. Congress has no power to adopt the statute in question, because it is not a fit subject for adoption. It is not now a law, nor has it ever to any legal purpose or intent had any existence. It would be just as reasonable, and as constitutional, for congress to adopt, or legalize, the act of an individual claiming sovereign power, as to adopt a statute enacted by a legislature without authority. If it has been done in this instance, it is certainly an original and extraordinary mode of legislation, without a precedent in congressional records. If, for example, some enterprising state should by statute create a national bank, and congress should assent to the statute, would the bank have a legal existence? The case supposed would be analogous to the one at bar, it being in either case an attempt by the state to exercise the power of congress to regulate inter-state commerce, and an attempt by congress to give existence to such legislation. The principles that can sustain the one will certainly justify the other.

Upon these two questions, the power of congress to

validate the statute in question, and its power to make the statute a federal law by adoption, the case of *Cooley* vs. *Wardens* is a direct and most satisfactory authority.

As it involves some of the most important questions arising in the case now before the Court, it will justify a careful analysis and consideration.

The action was brought to recover pilotage fees under an act of the state of Pennsylvania, passed in March, 1803, and the law was attacked as a regulation of inter-state commerce, in conflict with the power of congress, and therefore void. As one of the main issues in the case, the court was led to consider how the state statute was affected by the following law of congress, enacted August 7th, 1789:

"That all pilots in the bays, inlets, rivers, harbors, and ports of the United States, shall continue to be regulated in conformity with the existing laws of the states, respectively, wherein such pilots may be, or with such laws as the states may respectively hereafter enact for the purpose, until further legislative provision shall be made by congress."

The court lays down the rule, which is now a settled doctrine, that, as to commerce of a national character, admitting of a uniform system of regulation, the power of congress is exclusive; while as to inter-state commerce of a local nature, the states may act, subject to the power of congress to supersede their laws. That pilotage is of the latter character. That the law of Pennsylvania, is, therefore, constitutional; but does not derive any effect from the federal law, save that the latter implies a recognition of the state power in this particular branch of commerce. That, if it were not commerce of a local nature, however, the state law would be void,

as congress could not enlarge the state power. And that, if void, congress could not validate nor adopt it. After reciting the act of congress, the court says:

"If the law of Pennsylvania, now in question, had been in existence at the date of this act of congress, we might hold it to have been adopted by congress, and thus made a law of the United States, and so valid. Because this act does, in effect, give the force of an act of congress to the then existing state laws on this subject, so long as they should continue unrepealed by the state which enacted them. But the law on which these actions are founded was not enacted until 1803. What effect, then, can be attributed to so much of the act of 1789 as declares that pilots shall continue to be regulated in conformity 'with such laws as the states may respectively hereafter enact for the purpose, until further legislative provision shall be made by Congress'? If the states were divested of the power to legislate on this subject by the grant of the commercial power to congress, it is clear this act could not confer upon them power thus to legislate. If the constitution excluded the states from making any law regulating commerce, certainly congress cannot re-grant, or in any manner re-convey to the states that power. And yet this act of 1789 gives its sanction only to laws enacted by the states. This necessarily implies a constitutional power to legislate; for only a rule created by the sovereign power of a state, acting in its legislative capacity, can be deemed a law enacted by a state; and if the state has so limited its sovereign power that it no longer extends to a particular subject, manifestly it cannot, in any proper sense, be said to enact laws thereon. Entertaining these views, we are brought directly and un-

avoidably to the consideration of the question, whether the grant of the commercial power to congress did *per se* deprive the states of all power to regulate pilots."

Then follows the portion of the opinion devoted to the construction of the commerce clause, and the relative rights of congress and the states thereunder; after which the court proceeds:

"We have not adverted to the practical consequences of holding that the states possess no power to legislate for the regulation of pilots, though in our apprehension these would be of the most serious importance. For more than sixty years this subject has been acted on by the states, and the systems of some of them created, and of others essentially modified during that period. To hold that pilotage fees and penalties demanded and received during that time, have been illegally exacted, under color of void laws, would work an amount of mischief which a clear conviction of constitutional duty, if entertained, must force us to occasion, but which could be viewed by no just mind without deep regret. Nor would the mischief be limited to the past. If congress were now to pass a law adopting the existing state laws, if enacted without authority, and in violation of the constitution, it would seem to us to be a new and questionable mode of legislation. If the grant of commercial power in the constitution has deprived the states of all power to legislate for the regulation of commerce, if their laws on this subject are mere usurpations upon the exclusive power of the general government, and utterly void, it may be doubted whether congress could, with propriety, recognize them as laws, and adopt them as its own acts."

*Cooley* vs. *Board of Wardens*, 12 How., 300.

The proposition that congress can adopt a state statute only when the statute embraces a subject within the legislative control of the state enacting it, is supported by the authority of the leading case upon the construction of this clause of the constitution. Certainly, whether the Wilson bill refers to past legislation or not, it contemplates the future legislation of the state upon the subject, and "the adoption of laws, to be made in future, presupposes the right in the maker to legislate on the subject."

*Gibbons* vs. *Ogden*, 9 Wheat., 23.

"Congress," says this court, "cannot, by authorization or ratification, give the slightest effect to a state law or constitution in conflict with the constitution of the United States. That instrument is above and beyond the power of congress and the states, and is alike obligatory upon both."

*Gunn* vs. *Barry*, 8 Bank, Reg., 1.

But appellant insists, and correctly so, that the Kansas statute in question was declared void only in so far as it relates to inter-state commerce; and that, as to the internal commerce of the state, it is to-day a valid enactment. From this fact it is concluded that it is a fit subject for congressional adoption; and that, by adopting it, congress extends its operation to inter-state commerce.

If, however, we separate the valid from the void part of the statute, we find remaining only a statute confined to a subject within the exclusive control of the state, and congress cannot adopt a state law having no relation to its own powers. For the purpose of illustrating this principle, let us compare the adoption by

congress of a statute of this kind and its adoption of a pilotage law.

In enacting laws regulating pilots, a state regulates not only its internal commerce, but inter-state commerce to a certain extent, over which Congress has also jurisdiction. The subject regulated by the state being within the power of congress, it is clearly as proper and lawful a subject for its adoption as for its supersession. The power which will embrace the one must necessarily include the other. But the Kansas statute in question covers only (as a valid enactment) the internal commerce of the state, and has no operation upon any subject within the power or control of congress. If congress then adopts it, this is the state of affairs: The state enacts a statute regulating its internal commerce, over which congress has no jurisdiction, and it is adopted by congress, and by its adoption, it is claimed, it is made to extend to inter-state commerce, over which the state has no jurisdiction. By what method or plan of legislation can this be done? What system of jurisprudence will afford the requisite rules of construction? How can congress, by adopting one law, create an entirely different law, covering an entirely different subject?

If it is true that congress adopted the statute, then by so doing, it did not merely extend the operation of the statute, so as to give it a clear scope and wider operation, but, by adopting one law, it thereby created another and entirely different law, differing most materially in origin, character and effect, the one being within the exclusive power of congress, and beyond the sovereignty of the state, the other exclusive in the state, and beyond the jurisdiction of congress.

If it is true, as heretofore stated, that there is on

record no instance of an attempt by congress to validate or adopt a void state statute, it is no less true that there is no instance of an adoption by congress of a state statute having sole reference and application to the internal commerce or concerns of the state. Here is another novelty in the line of legislation. Congress, instead of enacting a law in the usual way, takes occasion to adopt a state statute, having no relation whatever to its own powers, as though it were the sole expedient at its command.

But, for the present, accepting as sound the theory that this is an adoption by congress of a valid statute, that does not change nor affect the nature of the objection before stated. That does not give the state courts jurisdiction to punish a violation of the federal law. If anything, it removes the matter further from the control of the state courts. For, as already stated, so far as inter-state commerce is concerned, the state statute, in that view, has and can have no application whatever, and it is entirely a federal measure. It is not claimed that the statute has by adoption united the forces of the federal and state power over inter-state commerce. So far only as it applies to the domestic commerce of the state is it at all a state measure.

3. While it is true that when the United States gives its assent to an existing state law, it is, nevertheless, subject to the repeal of the states, yet it is clear that in this instance that rule cannot apply. For the adoption of this statute is not an assent of the government to a state statute. It is, if at all a federal measure, the creation of an entirely new law, one beyond the jurisdiction of the states. The effect of the Wilson bill, as claimed, is the same as if congress had expressly pro-

vided that no sale of imported liquors shall be made in any state. If, then, a law of congress exclusively, it cannot be subject to the state's power of repeal. Now, it may be that the State of Kansas may change its policy as to the prohibition of the liquor traffic and repeal the law, so far as it has power to do so. This would leave in force only one restriction upon the traffic, viz.: a federal law prohibiting sales of imported liquor, while the flow of domestic liquor would be continuous and unrestrained, and the policy of the state would to that extent be thwarted. In that event the state would find the Wilson bill a hindrance instead of an aid. The bill would paralyze the arm, the movements of which it was designed to facilitate. An argument which leads to this conclusion can scarcely be sound. It is not pretended that congress, by the passage of the Wilson bill, intended to dictate to the states their policy in this regard, nor can it be claimed that the bill is designed to be a limitation of state power.

4. That the Wilson bill is designed to place imported liquor within the jurisdiction of the states and not to create a federal prohibitory law, is rendered by nothing else more clear than by the express words of the bill itself. That all liquor, says the bill, transported into any state, shall upon arrival, "be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory." There is no room here for doubt or conjecture. The bill provides that imported liquor shall, upon arrival in a state, occupy precisely the position held by domestic liquor in the state, that it shall be subject to the state

laws "to the same extent and in the same manner" as if it were domestic liquor. At this point then, congress takes leave of the subject, for domestic liquor is not within its power or control; and, if imported liquor thenceforth occupies the same position, it is no longer subject to federal power. The words of the bill, without any reservation or ambiguity, show the intent of congress by the enactment of the Wilson bill to be, to transfer the jurisdiction of the United States over this branch of inter-state commerce to the states. This is the evident purpose of the bill, stripped of all unfounded pretenses. This is demonstrated by the following proceedings, had pursuant to a call for the order of the day.

"The Vice-President: The order of the day will be stated.

"The Chief Clerk: A bill (§ 398) subjecting imported liquors to the provisions of the laws of the several states."

Congressional Rec. Vol. 2, p. 5324.

The theories of adoption and validation, advanced as explanations of the existence of the bill, fail in essential particulars, to be satisfactory; and, discarding them in favor of the real position assumed by congress in this enactment, we proceed to consider whether it rests upon constitutional principles.

## The Constitutionality of the Wilson Bill.

As heretofore stated, before the passage of this bill the states had exhausted all their resources to bring the inter-state commerce in liquor within their jurisdiction, and in vain. Towards the attainment of this end, the aid of congress was then invoked, resulting in the enactment of this measure.

It appears by the authorities above cited, that the commerce clause of the constitution vests in congress an exclusive power to regulate inter-state commerce of a national character, and that "whenever the terms in which a power is granted to congress, or the nature of the power requires that it shall be exercised exclusively by congress, the subject is as completely taken from the state legislatures as if they had been expressly forbidden to act on it:" and that the commerce in question here is of the character referred to by the rule quoted.

There is, therefore, in the constitution of the United States a direct mandate to the states, as operative and effective as if expressed in so many words, prohibiting them from regulating the commerce in question here.

Here, then, is a law of congress, conferring upon the states an authority to exercise the very power denied them by the constitution. While congress was doubtless actuated by worthy motives, and certainly cannot be chargeable with the design to defy the constitution from which it derives its own existence and authority, we respectfully submit that such is the effect of its action. This conclusion is certainly irresistible, unless we find in the constitution itself some provision enabling congress to extend the state power in this regard, or to delegate to the states its own power to regulate this branch of inter-state commerce.

In considering this question, we are not required to traverse unknown or doubtful ground, the rule having been conclusively established by the court nearly seventy years ago, and prevailing since without criticism or question.

Assuredly, here is no room for doubt or cavil; no difficult problem as to precedence presented for solution.

The constitution is the fountain of congressional power. In its provisions congress must find its authority, and by its restraints must be governed. The constitution determines the extent of federal and state power, and the former can no more enlarge the power of the latter than can the state increase the federal power. Both are dependent upon the provisions of the same instrument; and while the laws of congress, passed in pursuance of the constitution, are supreme, unless so passed its acts are without the slightest operation or effect.

Submitted to this test, what is the Wilson bill? Is it an act passed in pursuance of the constitution? If so, to which provision of that instrument does it trace its existence? Of the entire enumeration of congressional powers in the constitution, the only one relied upon is the commerce clause. Does it come within this clause?

As construed by the court, the clause in question vests in congress the sole and exclusive power to regulate the inter-state traffic in liquor, and inhibits the exercise of the same power by the states. The act of congress subjects this branch of commerce to the jurisdiction of the states. The constitution says this is a power which shall not be exercised by the states; the act of congress says it shall be. And yet it is pretended that the act is passed in pursuance of the constitution.

The act of congress in question violates not only the letter but the spirit, and ignores the object of the constitution. The most authentic history of this country, embodied in the reports of the Supreme Court of the United States, assigns as the principal purpose in adopting the constitution the desire to protect inter-state commerce from state interference. The people of one state did not wish to rely for their commercial prosperity

upon the judgment or whims of other states. Towards the attainment of the end desired, they framed a constitution, containing this provision, by which this power was effectually removed beyond state control. Congress by the Wilson bill, provides that a branch of this commerce shall be subject to the state jurisdiction. It allows one state either to admit this commodity, coming from other states, or to forbid its entrance. Thus it renders, to that extent, the commercial prosperity of some states dependent upon the legislatures of other states; and the constitution, adopted for the very purpose of avoiding this state of things, is relied upon to vindicate the act by which it is violated.

Again, what is the effect of the Wilson bill? Either the Wilson bill creates a new state power, or it does not. If it does not, then the act is utterly superfluous, and the law cannot impute to congress an intention to pass a superfluous act. It follows, therefore, that the power conferred by this act, upon the states did not exist before, and was therefore, created by the act.

If this be so, congress has, by the creation of a new state power, enlarged the sovereignty of the state. It has extended the jurisdiction of the state to a subject over which it did not previously exist. Is there in the constitution any provision, by words or implication giving congress power to enlarge state sovereignty? It is inconsistent with the theory upon which this government if founded. The relations of the federal government to the states were not allowed to rest upon the claims or pretensions of either. The controlling instrument, which prescribes the duties of the one, defines the powers of the other. If congress has power to extend the state sovereignty, the same power will enable it to restrict it;

further, if it can restrict a state power, it can destroy it; if it can destroy one, it can destroy all; and hence the states may be legally annihilated by congress at any time.' This is not in accordance with the principle underlying the foundations of our government. The sovereignty of the states does not depend upon the will of congress, nor can the states receive from congress legislative alms, generously granted by the Wilson bill.

Suppose the State of Kansas to pass a statute giving congress power to prohibit the manufacture of liquor within the boundaries of the state, and congress to act under the authority thus conferred, probably no one would seriously contend that the act of congress would be valid. Yet, if congress has power under the constitution to authorize the states to exercise its commercial authority, why have not the states power to authorize congress to wield their police jurisdiction? Where is the constitutional provision, or principle of government, forbidding the one, that would allow the other?

The United States and the states being distinct governments, sovereign and supreme within their respective spheres, and both alike being controlled by the federal constitution, it follows that the power of neither can be extended by the other.

"Congress cannot enable a state to legislate."

*Gibbons* vs. *Ogden*, 9 Wheat., 1.

Mr. Justice McLean, in a separate opinion, concurred in by the opinions of a majority of the court, says:

"The argument is, that a state, acting in a subordinate capacity, wholly inconsistent with its sovereignty,

may regulate foreign commerce until congress shall act on the same subject; and that the statute must then yield to the paramount authority. A jealousy of the federal powers has often been expressed, and an apprehension entertained that they would impair the sovereignty of the states. But this argument degrades the states, by making their legislation, to the extent stated, subject to the will of congress. State powers do not rest upon this basis. Congress can in no respect restrict or enlarge state powers, though they may adopt a state law. State powers are at all times and under all circumstances exercised independently of the general government."

Passenger cases, 7 How., 399.

The same justice in another case, says:

"Can congress annul the acts of a state passed within its admitted sovereignty? No one, I suppose, could sustain such a proposition. State sovereignty can neither be enlarged nor diminished by an act of congress. It is not known that congress has ever claimed such a power. * * * In the opinion of the chief justice, above cited, it is said congress may adopt the laws of a state, but it cannot enable a state to legislate. In other words, it cannot transfer to a state legislative powers."

*Cooley* vs. *Wardens*, 12 How., 325.

Mr. Chief Justice Taney, construing the commerce clause of the constitution, with a view to showing that the states retain a commercial power, adverted to the state pilotage law in force before the adoption of the constitution, adopted by congress by the provision that pilots shall continue to be regulated by the laws of the respective states then in force, or which may thereafter be passed, until congress shall make provision on the subject. He says:

"Undoubtedly congress had the power, by assenting to the state laws then in force, to make them its own, and thus make the previous regulations of the states the regulations of the general government. But it is equally clear that, as to all future laws by the states, if the constitution deprived them of the power of making any regulations on the subject, an act of congress could not restore it. For it will hardly be contended that an act of congress can alter the constitution, and confer upon a state a power which the constitution declares it shall not possess. And if the grant of power to the United States to make regulations of commerce is a prohibition to the states to make any regulation upon the subject, congress could no more restore to the states the power of which it was thus deprived, than it could authorize them to coin money, or make paper money a tender in the payment of debts, or to do any other act forbidden to them by the constitution."

License cases, 5 How., 579.

Mr. Justice Story, delivering a dissenting opinion, the principles of which were subsequenty approved and adopted by the court in the passenger cases, says:

"If the power to regulate commerce be exclusive in congress, then there is no difference between an express and an implied prohibition upon the states. * * * If the act is a regulation of commerce, and that subject belongs exclusively to congress, it is a means cut off from the range of state sovereignty and state legislation."

*New York* vs. *Mila*, 11 Pet., 157.

"If the states were divested of the power to legislate on this subject by the grant of the commercial power to congress, it is clear this act of congress could

not confer upon them power thus to legislate. If the constitution excluded the states from making any law regulating commerce, certainly congress cannot re-grant, or in any manner re-convey to the states that power."

*Cooley* vs. *Warden*, *supra*.

The argument may be well illustrated by a comparison of this case with the cause involving the construction of the bankruptcy power. The question arose as to the validity of a state bankruptcy law, enacted after the passage and subsequent repeal of a federal bankruptcy law. It was argued that the bankruptcy power was vested exclusively in congress; that congress, by the exercise of its power, extinguished the power of the states, and, their power having once been extinguished, it could never be revived. The court held that the bankruptcy power is not exclusive in its character, but admits the force of the argument advanced upon the assumption that it is an exclusive power, by the use of the following language:

"It has been said that congress has exercised this power, and, by doing so, has extinguished the power of the states, which cannot be revived by repealing the law of congress. We do not think so. If the right of the states to pass a bankrupt law is not taken away by the mere grant of that power to congress, it cannot be extinguished; it can only be suspended by the enactment of a general bankrupt law. The repeal of that law cannot, it is true, confer the power upon the states; but it removes a disability to its exercise, which was created by the act of congress."

*Sturges* vs. *Crowninshield*, 4 Wheat., 196.

By clear implication, the court held that when a

power is taken away from the states by the grant of that right to congress, it is extinguished, and cannot be revived. The court rests its decision upon that point on the ground that the state power in question there had never been extinguished, but only suspended; it had always existed. But the commercial power, so far as it is vested in congress, has been extinguished as a state power, and cannot, therefore, be revived, re-granted nor re-conveyed by an act of congress.

Mr. Chief Justice Marshall, in one of the leading cases on constitutional law, laid down some doctrines directly applicable to the case at bar. This was the case involving the power of the government to incorporate a bank, and the power of the state to tax the bank. The court, upholding the former power and denying the latter, proceeds to discuss the proposition advanced by the state that the federal constitution did not emanate from the people, but "as the act of sovereign and independent states." In demonstrating the fallacy of this argument, the court proceeds to say:

"It has been said that the people had already surrendered all their powers to the state sovereignties, and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government, does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted, had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty created by themselves." * * "If," proceeds the court, considering the power of the state to tax the bank, "we measure the power of taxation residing in a state, by the extent of sovereignty which the

people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired, which leaves to a state the command of all its resources; and which places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union. * * We have a principle which is safe for the states, and safe for the Union. * * Would the people of any one state trust those of another with a power to control the most insignificant operations of their state government? We know they would not. Why, then, should we suppose that the people of any one state should be willing to trust those of another with a power to control the operations of a government to which they have confided the most important and most valuable interests? In the legislature of the Union alone, are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused."

*McCulloch* vs. *Maryland*, 4 Wheat., 401.

In the case last cited, Mr. Chief Justice Marshall holds, in relation to the state power, that the constitution "places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union." In the case of *Leisy* vs. *Hardin*, Mr. Chief Justice Fuller holds that the power to regulate the inter-state traffic of liquor is one of these powers. And in the License cases Mr. Chief Justice Taney declares that "if the constitution deprived them

(the states) of making any regulation on the subject, an act of congress could not restore it." These principles would seem to be decisive of the case now before the court. The questions as to the object had in view at the time of the enactment of the Wilson bill, or as to the form or means by which the states were to be given jurisdiction of the subject matter, are immaterial, so long as the effect of the law is to confer upon the states the power which the constitution forbids them to exercise.

An excellent authority is found in a case decided by the Supreme Court of South Carolina. The case arose upon a bill to foreclose a chattel mortgage on slaves, and the state constitution—accepted and ratified by congress under the Reconstruction Act—prohibited the courts from entertaining such suits. The court held this section of the state constitution to be void, and then proceeded to consider the argument that effect had been given to the provision by the ratification of congress, a proposition which the court denied.

"A power," says the court, "is now claimed for congress by the argument, so omnipotent that it would virtually destroy all the safegaurds which protect the constitution from total annihilation at the hands of congress. Let the argument be illustrated by the suggestion of an example: Suppose the constitution adopted by the state, and accepted by congress, had provided, "that the state should have the power to impair the obligation of contracts," "or that the state should coin money," would it, for a moment, be contended that the judiciary would be estopped from declaring either of them obnoxious to the constitution of the United States, and therefore of no force or effect? Even conceding, as was held in *Evans* vs. *Eaton*, (Pet. C. C. R. 337) that "there

is nothing in the constitution of the United States which forbids congress to pass laws violating the obligations of contracts," can congress empower a state to pass such laws? If it can, then all the prohibitions of the constitution of the United States in regard to the powers of a state are worth nothing, if that which is not permitted to the states under the constitution can thus be done by the license or consent of congress, although congress, even, has no right to amend it (Const. U. S. Art. 5), and can only by a two-thirds vote of both houses, propose amendments to be ratified by the legislatures or conventions of three-fourths of the several states, or on the application of the legislatures of two-thirds of the several states, call a convention for proposing amendments to be ratified in the same way. Without then any power on its own part to amend, the authority is claimed for it to change, vary or destroy an article of the constitution, provided it can find the opportunity to second and confirm the unlawful act of a state, when it is called upon to pass on its constitution. * * The whole argument proceeds upon the ground that congress can authorize a state to violate the constitution of the United States, provided that it does so by passing on a state constitution and accepting it, though it contains provisions in direct antagonism to such constitution. If it can, what becomes of that clause in the said constitution which declares "that this constitution and the laws of the United States which shall be made in pursuance thereof," etc., "shall be the supreme law," etc.

*Calhoun* vs *Calhoun*, 2 Rich. (N. S.) 298.

Counsel for the state, in his brief, relies upon the following extract from the argument of Senator Edmunds before the senate: "The objection that has been

made to this bill is, that we are delegating it to a state. I deny the proposition. I say that by this bill * * congress is undertaking to regulate the traffic among the states, of this thing, by saying: 'We employ the agency of the people, through its legislative authority, of the State of Missouri, for instance, to say whether it is wise to admit this thing in the community that is there, from the State of Illinois or not.'"

The answer of the people to this proposal of congress is: "How can you employ an agent to execute this power, when it is a duty devolved upon you individually by the constitution, You yourself are an agent, and cannot, therefore, delegate your authority to another, least of all to your principal, the people."

"We say," proceeds the senator, "to the State of Vermont: 'We employ you as the agent of congress in the regulation of this traffic to determine whether the condition of things as to the state of public morals there will warrant that thing.'"

In reply to this proposition, it may be said that the states must, in observance of the constitution, decline the appointment offered, for the reasons that they are the principals in all matters concerning their public morals, and that they cannot act as either the advisers or agents of congress. They have nothing to do with interstate commerce of this character. And, if congress can employ the agency of a state in a regulation made under one of its exclusive powers, it may transact all its business in the same manner.

"Congress, therefore," continues the senator, "instead of delegating a power, is exerting the same power in respect of internal commerce that it has always exerted in respect of external commerce, to authorize

somebody to determine how and under what conditions this commerce, if you call it that, shall be carried on."

If congress can confer such an authority as this, assuredly it is not restricted in its choice of agents. The "somebody" referred to by the senator, may be an individual as well as a state; and, as he claims, that would be a regulation, not by the agent but by congress. According to this argument, it is quite possible for a private individual to regulate inter-state commerce, and his acts may be construed as acts of congress, because authorized or permitted by congress.

PERMISSION BY CONGRESS TO STATES TO LEGISLATE.

The first clause of section 10 of article 1 of the constitution of the United States enumerates certain powers which the states are forbidden to exercise in any event. Clause 2 of the same article is as follows:

"No state shall, without the consent of the congress lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net proceeds of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or contract with another state or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

This section is the only provision made by the constitution by which congress may permit a state to legislate. This provision gives rise to several inferences. One

of these, which we believe to be the correct one, is that, under well known rules of construction, the existence of this provision demonstrates, in the first place, that, in its absence congress would have no power to consent to state legislation of any character, and in the second place, by implication prohibits congress from enabling states to legislate on any subjects other than those expressly mentioned.

In the case of *Gibbons* vs. *Ogden*, it was conclusively established—and the rule has never since been questioned or doubted—that this provision includes all the subjects over which congress may permit the states to legislate; that, as to all other subjects placed within the control of congress and requiring its legislation, it has no power to delegate to the states its own authority to legislate, and that, while the existence of this provision proves that, in its absence, the states could legislate upon the subject without the permission of congress, yet that fact does not prove that the states can, because not similarly restrained, legislate for commerce within federal control, the power mentioned in the provision being a taxing power, and in no sense a commercial power.

Mr. Justice Johnson, for many years the associate of the illustrious magistrate who delivered the opinion in this case, wrote a concurring opinion, which is denominated by Mr. Justice Bradley, in the opinion of the Court in the case of *Walling* vs. *Michigan*, 116 U. S., 446, "a very able argument." He says:

"But so far from sustaining an inference in favor of the power of the states over commerce, I cannot but think that the guarded provisions of the 10th section, on this subject, furnish a strong argument against that inference. * * * The inferences, to be correctly drawn from

this whole article, appear to me to be altogether in favor of the exclusive grants to congress of power over commerce, and the reverse of that which the appellee contends for. This section contains the positive restrictions imposed by the constitution upon state power. The first clause of it specifies those powers which the states are precluded from exercising, even though the congress were to permit them. The second, those which the states may exercise with the consent of congress. And here the sedulous attention to the subject of state exclusion from commercial power is strongly marked. Not satisfied with the express grant to the United States of the power over commerce, this clause negatives the exercise of that power to the states, as to the only two objects which could ever tempt them to assume the exercise of that power, to-wit, the collection of a revenue from imposts and duties on imports and exports; or from a tonnage duty.

"As to imposts on imports or exports, such a revenue might have been aimed at directly, by express legislation, or indirectly, in the form of inspection laws; and it became necessary to guard against both. Hence, first the consent of congress to such imposts or duties is made necessary; and as to inspection laws, it is limited to the minimum of expenses. Then, the money so raised shall be paid into the treasury of the United States, or may be sued for, since it is declared to be for their use. And lastly, all such laws may be modified, or repealed, by an act of congress. It is impossible for a right to be more guarded. As to a tonnage duty, that could be recovered in but one way; and a sum so raised, being obviously necessary for the execution of health laws, and other unavoidable port expenses, it was intended that it should go into the state

treasuries; and nothing more was required, therefore, than the consent of congress. But this whole clause, as to these two subjects, appears to have been introduced *ex abundanti cautela*, to remove every temptation to attempt to interfere with the powers of congress over commerce, and to show how far congress might consent to permit the states to exercise that power. Beyond those limits, even by the consent of congress, they could not exercise it."

*Gibbons* vs. *Ogden*, *supra*.

Counsel for appellant says that the grant of power to congress to regulate commerce with foreign nations and among the states is without limitation other than the discretion of congress, and from that fact infers that its grant of power to the states by the Wilson bill is authorized because not expressly forbidden by the constitution. It is true the grant of power to congress is without limitations other than those prescribed by the constitution, but the delegation of authority to the state is one of the limitations prescribed by the constitution. The commercial power of congress is not exceptional in this respect; every federal power is subjed to no limitation other than the requirements of the constitution. The veto power of the president of the United States is subject only to such limitations. Has the president, therefore, the power to authorize another to veto or not veto a bill as the latter, in ~~the latter's~~ his discretion, may prefer?

Counsel for appellant says that the inquiry in this case is whether the bill is a regulation of commerce between the states. This conceded, he says, all else follows. We do concede that it is such a regulation; any law by congress affecting commerce must necessarily be

a commercial regulation. It is true that, by authorizing the states to regulate inter-state commerce, congress enacts a commercial regulation. So would it if it should authorize a private corporation to do the same thing.

It would appear to be settled beyond all doubt, by the authorities from which these excerpts are taken, that the constitution provides or allows no means by which a state can be enabled to legislate with respect to foreign or inter-state commerce. That it does not possess the power as an attribute of its sovereignty, is certain. That congress cannot confer or delegate to it this power, is no less clear. If, therefore, the Wilson bill subjects an article of inter-state commerce to the state jurisdiction, what claim has it to validity? That it does subject an article of inter-state commerce to the state jurisdiction, admits of no doubt; for if the state statutes are to have any effect upon imported liquors, they are, to that extent, commercial regulations; and this was the express point decided in the case of *Bowman* vs. *R. R.*, *supra*.

### Is Liquor Excluded by the Wilson Bill from the Jurisdiction of Congress over Commerce?

To overcome the force of the objection just stated, it is contended that congress has not, by the Wilson bill, attempted to confer a commercial power, but its intention is to exclude liquor from its commercial power, and leave it subject to the police jurisdiction of the states. Senator Hoar, whose argument in the senate is quoted by counsel for appellant, advances the position that congress may declare that an article of commerce shall not be commerce for all legislative purposes, and that, by the Wilson bill, congress declares that liquor shall be so excluded.

If this be the design of congress, let us see, in the first place, whether it has adopted the means productive of this result; and, in the second place, whether it has the power requisite to effect this purpose.

Was it the intention of congress to deprive, and did it in fact deprive liquor of its commercial character? If not, if it is still an article of commerce, we are unable to see how congress can relinquish its control over it without violating the constitutional provision which places it within its power. It is equally certain that, while it is an article of commerce, the constitution forbids the states to exercise any control over it, and it cannot, therefore, if still an article of commerce, "be subject to the operation and effect of the laws of such state," as required by the Wilson bill. Yet it is manifest that this is exactly what congress desires to do: To allow liquor to retain its commercial character, and yet to subject it to the state jurisdiction.

The bill does not in express terms declare that liquor shall be no longer regarded to be an article of commerce, and to establish such an intention, implication is the sole resource. The bill provides that liquors shall, upon entering a state be subject to its police laws. A majority of the states have no police laws affecting it, and so far as the bill applies to those states, therefore, it leaves the property in exactly the position occupied by it before. For example, the freedom of the liquor traffic between New York and Pennsylvania is in no way impaired; and a suit instituted in the Circuit Court of the United States in Pennsylvania, to recover the amount of a sale of liquor shipped from New York, could certainly be maintained. Thus congress makes no attempt to divest liquor of its commercial properties, but leaves each state to act upon

it according to its own pleasure. If Illinois chooses to regard it as an article of commerce, it is left at liberty by congress to do so. If Iowa prefers to regard it as no article of commerce, it may do so by the terms of this bill. Thus congress has left it to the states to determine whether it is, or is not an article of commerce, and so to determine whether it is, or is not subject to the power and control of congress; for, if an article of commerce, the constitution renders it subject to that power.

The power to regulate commerce includes the right to determine what is commerce, subject to regulation. The latter power is incidental to the former; is, in fact, a component and essential part of it. If congress can delegate a part of its commercial power to the states, it can certainly delegate any other part, and therefore the whole. This power is not withheld by the constitution from the states in fractions, but as an entirety. If, therefore, congress can allow the states to determine whether or not imported liquor shall be an article of commerce, subject to the power of congress, it may delegate its entire commercial power power to the states. In fact, it would be better to transfer its power, as a whole, than to leave it in this uncertain condition, subject to the varying policy of each particular state.

To illustrate: Assuming all statutes in question here—the Wilson bill and the state statutes—to be valid enactments, let us see to what we are led by accepting as sound the argument, that, by the passage of the Wilson bill, congress can exclude liquor from its commercial power and delegate it to the police jurisdiction of the states. In the majority of states liquor is regarded to be property, and a fit subject for inter-state commerce, and is therefore left by those states subject to the

will of congress, as manifested by its former acts and inaction. In the few prohibition states, liquor is regarded to be no property, and inter-state traffic in it may be forbidden by the states, as between themselves respectively and other states. So far as these states are concerned, therefore, the commercial power of congress in this regard is at an end. Suppose the prohibition states, however, to reverse their policy and repeal their prohibitory laws, inter-state traffic in liquor would again be free from state burdens, it would again become property in those states and subject to the control of congress. This being true, it is within the power of the states to exercise at will a jurisdiction which did not formerly exist, and to restore the power to congress, at their pleasure, thereby cancelling their indebtedness, created by this loan of constitutional power.

From the freedom of the liquor traffic permitted by congress in a majority of the states, and the power of the courts to enforce contracts based on sales of liquor, we perceive that it was not the design of congress to deprive liquor of a commercial character. But it is undoubtedly true, as contended by the state, that it was the design of congress to subject liquor to the police jurisdiction of the states, and to exclude it from its own commercial power, if the states so willed. This is clearly the intention of congress. It remains now to be seen whether it has power to execute this design.

If congress has power, by the passage of the Wilson bill, to exclude liquor from its commercial control, and subject it to the police jurisdiction of the state, then it is in the power of congress to render the commerce clause of the constitution entirely inoperative. For, if it can exclude one article of commerce from its jurisdic-

tion, it can exclude all, and thus divest itself of the entire commercial power confided to it by the constitution, and subject it to the police power of the states, notwithstanding the inhibition of the constitution to the contrary. The Wilson bill is, in fact, a state option law, for the existence of which the constitution makes no provision, and if it can exist independently of that instrument, there is no reason why it may not be extended to all subjects.

But, whatever may have been the intention of congress as to the effect of its act upon the character of liquor as an article of commerce, and conceding, for the purpose of the argument, that congress can and did deprive liquor of commercial properties, what power has congress to provide, as it does, that it shall be subject to the police laws of the states? The police power is but a synonym for the sovereign power of the state. It is a power reserved to the states, absolute and supreme wherever it exists, and without the slightest dependence on the will of congress. Either the states can exercise a police power over this subject by virtue of their own sovereignty, or they cannot exercise it at all. If they have the power, it requires no declaration or permission of congress to render it operative; if they have not, they can receive none from congress. In other words, their police power is absolute and plenary, unless restrained by the constitution; and, if restrained by that instrument, congress cannot remove the restriction.

In a former part of this brief, it is argued that congress cannot delegate its own powers to the states. If this be true, it is no less certain that congress cannot delegate to the states powers which it does not itself possess. What power is it that the Wilson bill attempts

to confer upon the states? Is it a commercial or a police power? If the former, it is a delegation to the states of a power which the constitution has vested in congress, and requires it to exercise. If the latter, it is the creation by congress of a new police power in the states, and one which it does not itself possess. If congress were to pass a law similar to the state statute to the operation of which it subjects liquor, it would be a void enactment, because, in the language of Mr. Chief Justice Chase, in the construction of an act of congress prohibiting the mixture for sale, of naptha and illuminating oils, "as a police regulation, relating exclusively to the internal trade of the states, it can only have effect where the legislative authority of congress excludes territorially all state legislation, as for example, in the District of Columbia. Within state limits, it can have no constitutional operation."

*United States* vs. *De Witt*, 9 Wall., 41.

In answer to these objections, it may be said that congress does not claim any police power in this regard, and does not intend to create a new police power for the states, but it designs merely to recognize the police power of the states theretofore existing. But this reply is not satisfactory; nor does it at all lessen the force of the objections. What police power does it attempt to recognize? There has been no police power in the states over this subject, since the adoption of the constitution. Before the existence of that instrument, it, of course existed; but it was thereby taken away. Unless, therefore, it was intended by congress to restore or create a police power in the states over this subject by the passage of the Wilson bill, it is a mere waste of words for congress to say in the Wilson bill that it shall be subject to the police power of the states.

In either or in any event, under any construction of which the bill is susceptible, it is an attempt to extend the state police power to a subject over which it did not previously exist, and is, therefore, beyond doubt, an enlargement of the sovereignty of the states. To say that by the Wilson bill congress does not attempt to delegate its commercial power to the states, but merely remits commerce over which it has jurisdiction to the state police powers, is to dispute the form, while admitting the substance, of the claim against its validity. If congress can confer upon the states the police power claimed, it can grant as well a commercial power; more probably in fact, because the latter is a power within its possession, while the former is entirely beyond its control.

It is difficult to see the force of the argument that congress did not intend to enlarge the state sovereignty, but designed merely to remit liquor to the jurisdiction of the states under their police power. What is the difference between making the state power extend over the subject, and the subject come within the state power?

It is equally difficult to understand how congress can, while admitting liquor to be an article of commerce, and permitting its sale, and enforcing contracts regarding it, in most of the states of the Union, without hindrance, exclude it from its jurisdiction. The constitution made an apportionment of powers between congress and the states, fully covering this subject, and this branch of commerce was confided to congress and withheld from the states. By what authority can congress make a new apportionment?

Suppose the State of Kansas, instead of prohibiting the importation of liquor into the state and the sale of

the import, had enacted a statute subjecting liquor transported into it from other states to a tax; and congress, instead of passing the Wilson bill, had enacted a law that such commerce shall be subject to the taxing power of the state; would that enactment have any validity or effect? In such an event, it would be argued by the state that the restrictions theretofore existing on its power of taxation had been removed by congress, and the state law was thereby rendered operative. And this contention would be sound, if the Wilson bill has the effect claimed for it by the state; for, beyond doubt, the power that can grant authority to prohibit may also confer power to tax.

It may be said that this is not an appropriate illustration of the argument, because the Wilson bill covers a police power, while the bill supposed would concern a taxing power. But the distinction, while it exists, does not affect the question. The police power of the state and its taxing power stand upon an equality; they are both attributes of state sovereignty, and are equally independent of congress. It is just as competent for congress to extend the one as to enlarge the other.

EXPRESSIONS OF COURT, IN BOWMAN AND LEISY CASES.

The main ground relied upon by the state, in support of the validity of the Wilson bill, is the language of the court in the case of *Bowman* vs. *R. R. Co.*, and *Leisy* vs. *Hardin*, *supra*. In the former case, the court says:

"So far as these regulations made by congress extend, they are certainly indications of its intention that the transportation of commodities between the states shall be free, except where it is positively restricted by congress

itself, or by the states in particular cases, by the express permission of congress. * * It cannot, without the consent of congress, express or implied, regulate commerce between its people, and those of the other states of the Union in order to effect its end."

This language in no way sustains the claims of the state or militates against appellee's position. The permission of congress is applied by the court to "particular cases;" and, as seen, there are particular cases where such permission may be given, for which the constitution makes provision.

In *Leisy* vs. *Hardin*, the court says:

"A subject matter which has been confided exclusively to congress by the constitution is not within the jurisdiction of the police power of the state, unless placed there by congressional action."

From the use of this language by the court, it is argued that by the case from which it is quoted, it is laid down that congress may authorize states to regulate inter-state commerce, or place inter-state commerce within their jurisdiction. Standing alone, the final clause of this paragraph might justify the inference, but we must consider it in connection with the entire opinion.

In this connection, it is well to recall the fact that there are certain branches of commerce, viz., commerce of a local nature, though conducted among the states, over which the states may legislate; and that the state is subject only to the will of congress in this regard. While state statutes affecting inter-state commerce of a national character are declared void because conflicting with the power of congress, those concerning local commerce, though inter-state, are void only if conflicting with an act of congress. And this is probably

what the court had in view throughout the opinion, whenever it referred to a permission by congress to the states to regulate inter-state commerce. There are several reasons to be urged in support of this position.

1. That the court did not intend to hold that congress may permit the states to regulate commerce within its exclusive jurisdiction, appears conclusively from the citation by the court of the authorities sustaining its position. The cases cited, *Henderson* vs. *Mayor*, *R. R.* vs. *Husen*, *Walling* vs. *Michigan*, *Mobile County* vs. *Kimball*, and all the other cases, cited under this head, point to the same conclusion. In no single one of them is there a word or hint of any power in congress to permit the states to regulate commerce within its exclusive jurisdiction. On the other hand they are positive and direct authorities upon the main proposition laid down by the Court, irrespective of the words "unless placed there by congressional action." "A subject matter," says the Court, "which has been confided exclusively to congress by the constitution is not within the jurisdiction of the police power of the state." This is the proposition in the mind of the court, and the one sustained to the letter by all the authorities there cited.

2. It is, moreover, rendered certain that to this main proposition the attention of the court was directed by the fact that that was the question then directly presented to the court. The case did not involve the construction of a federal law, vesting the states with commercial power, nor the validity of a state law enacted with the permission of congress. The state statute under consideration in that case was an attempt on the part of the state, by virtue of its own authority and without

congressional action, to exercise jurisdiction over interstate commerce, exclusively within national control.

3. The construction placed by the state upon the clause quoted is inconsistent with the remainder of the opinion, in which all the prevailing rules of the construction of the commerce clause are clearly and distinctly reviewed and approved and applied to the case then presented. It is therein laid down that, over commerce of a national character, admitting of a uniform system of regulation, congress has sole jurisdiction, and that an exercise of such a power by the state is an encroachment upon the federal power. And the Court, after the use of the language relied upon by the state in this case, proceeds to explain and specify what branches of commerce may be confided by congress to the states for regulation. To comprehend the meaning of the Court, we must not rely upon an isolated sentence or paragraph, but consider it with reference to its context. Let us consider the clause in question in connection with the entire paragraph of which it forms a part.

"And while, by virtue of its jurisdiction over persons and property within its limits, a state may provide for the security of the lives, limbs, health and comfort of persons, and the protection of property so situated, yet a subject matter which has been confided exclusively to congress by the constitution, is not within the jurisdiction of the police power of the state, unless placed there by congressional action. (Citing authorities). The power to regulate commerce among the states is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the states may legislate in regard to them with a view to local needs and circumstances, until congress otherwise

directs, but the power thus exercised by the states is not identical in its extent with the power to regulate commerce among the states. * * Where the subject matter requires a uniform system as between the states, the power controlling it is vested exclusively in congress, and cannot be encroached upon by the states; but where, in relation to the subject matter, different rules may be suitable for different localities, the states may exercise powers which, though they may be said to partake of the nature of the power granted to the general government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of congress in effectuation of the general power."

*Leisy* vs. *Hardin*, *supra*.

The same remarks apply to these words of the Court, employed in the same case: "The responsibility is upon congress, so far as the regulation of inter-state commerce is concerned, to remove the restrictions upon the state in dealing with imported articles of trade within its limits which have not been mingled with the common mass of property therein." The court certainly has reference to restrictions placed upon the state action in the way of congressional legislation, which may be removed by congress at its will. But congress certainly cannot remove the restrictions created by the constitution, among which is the provision withholding from the states all power to regulate inter-state commerce of a national character; and the commerce in question is in this very case held by the Court to be commerce of the character covered by this inhibition.

Had the Court expressed the opinion contended for by the state, viz., that congress may place commerce,

confided by the constitution to its exclusive power, within the police jurisdiction of the states, it would at best have been *obiter dictum*, which, though entitled to the highest respect and most attentive consideration, would not preclude further inquiry upon the question in a case where the point is directly presented. It cannot for a moment be supposed that the Court intended to overrule its opinion in the numerous cases above cited, without a single reference to them. All of them unite in holding that, as to commerce of a national character, the constitution has deprived the states of all control, and their power in this regard cannot be restored by congress. In no single case are these principles doubted or criticised; not one asserts a contrary doctrine. It is impossible to ascribe to the court an intention to overrule these cases, in the absence of any allusion to them.

During the entire period of the existence of this government, this is the first time congress has attempted to confer upon the states authority to regulate commerce of the class confided to its exclusive jurisdiction. In fact it is a new departure in federal legislation. We know of no other instance, to be found in the revised statutes of the United States, where congress has attempted to confer upon a state power to legislate over a subject confided by any section of the constitution to its exclusive control. Nevertheless, it is now contended that it is a power existing in congress, though dormant 120 years. Similar occasions have heretofore arisen for its exercise; and, while the failure to exert a power does not disprove its existence, it may be fairly taken into consideration as a construction by congress of its power in this regard.

Counsel for appellant presents, as an argument in

support of the validity of this bill, the fact that it received the support, in congress, of some of the ablest constitutional lawyers of this country. Yet it is a fact, shown by the record, that scarcely two of them agreed upon a theory which would sustain the validity of the law. Judge Reed says that the bill makes the state statute a federal law by adoption. Senator Hoar says that it excludes liquor from commerce for the purpose requisite, and remits it to the police power of the states. Senator Edmunds takes the view that by it the states are appointed the agents of congress to determine the debated question. Whichever theory may be correct, it was certainly not adopted by the majority, which must, in consequence, have been mistaken.

Again, the opinion of the majority in congress, though entitled to great respect, is rendered inconclusive by another fact. From the speeches, as reported, it appears that the principal reason which led to the passage of the bill was the opinion of many congressmen who voted for it, that the decision of the Court in the Leisy-Hardin case was erroneous, in that it deprived the states of a power which they possess under the constitution. Whatever measures then were necessary to restore the power thus denied, were deemed to be justifiable; and so far from being regarded to be a violation of the constitution, they were regarded as a vindication of the constitution, as construed by them. Senator George, one of the most earnest supporters of the bill, says:

"I desire it to be understood, and to put it upon the record, that I protest against the doctrine that congress can give power to the states. * * * In no other case, but in making restoration to the states of a necessary power, of which they have been wrongfully de-

prived by a decision of the Supreme Court, would I give even by the remotest implication my assent to a bill which could favor the construction of a grant of power by congress, the creature, to the states, the creators of the constitution and the grantors of all powers held under it."

Congressional Records, Vol. 21, p. 5,330.

Waiving the point that the people, and not the states, are the grantors of power to congress, according to Mr. Chief Justice Marshall (*McCulloch* vs. *Maryland*, 4 Wheat., 401) we desire merely to direct attention to the ground of the senator's support of this bill. Senator Gray likewise admits that he votes for it reluctantly, "inasmuch as it seems upon its face to reverse the old theory of the relation of the states to the federal government," and several similar views were expressed.

In the next place, it must be stated, with all due respect, that the conclusions of some of these gentlemen proceed from the outset upon erroneous premises. They express great astonishment at the Leisy-Hardin decision, and say it furnishes the first instance of an assertion of the doctrine therein laid down, when in fact, in the case of *Brown* vs. *Maryland*, the Court in express terms held that the right to sell imported liquor in its original package existed as an inseparable incident to the right to import it.

Under all the circumstances, we cannot accept the action of congress as conclusive, but submit for the consideration of this Court, the final and supreme arbiter, the questions presented upon the record in this case.

Respectfully submitted,

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*Attorneys for Appellee.*

# In the Supreme Court

## OF THE UNITED STATES

John M. Wilkerson, Sheriff of Shawnee County, State of Kansas, *Appellant*,

Charles A. Rahrer, *Appellee*.

No. 15[illegible]

## BRIEF FOR APPELLEE.

DAVID OVERMYER,
*Attorney for Appellee.*

# In the Supreme Court

## OF THE UNITED STATES.

JOHN M. WILKERSON, Sheriff of Shawnee County, State of Kansas, *Appellant*,

v.

CHARLES A. RAHRER, *Appellee*.

No. 1529.

## BRIEF FOR APPELLEE.

### SALE IN ORIGINAL PACKAGE.

THE agreed statement of facts shows that the liquor alleged in the information to have been sold in violation of the prohibitory law of Kansas was sold by the appellee, petitioner below, as the agent of Maynard, Hopkins & Company, of Kansas City, Missouri, and that said liquor was all sold in the original packages in which the same was by said non-resident firm shipped into the State of Kansas.

Ex-Attorney General Kellogg and County Attorney Welch, in the brief for appellant, without presenting any argument to sustain the point, nevertheless present the query as to whether the pint of whisky sold by Rahrer was in fact an original package. I shall not argue the

proposition. The statement of facts shows that the whisky was sold in the original package in which the same was imported into the State. It was so regarded and treated in the argument before the Circuit Court, and so treated by the court. That the sales charged in the information were sales in the original package, was and is one of the conceded points in the case, and to tarry now upon a dispute over such matters would be to trifle with the grave questions involved in this case, and for the review and settlement of which this appeal has been brought to this court.

## NO QUESTION AS TO ISSUANCE OF WRIT.

Without questioning the *power* of the United States Circuit Court to issue the writ and release the prisoner if in its opinion he was in custody in violation of the constitution, Messrs. Kellogg and Welch, in their brief, contend that the court "*ought not*" to have exercised that power. The only question presented by this contention is as to whether the court abused its discretion in entertaining the petition and awarding the writ. No authority is presented, and I apprehend that no authority can be presented, to warrant this court in reversing the judgment of a Circuit Court, where the judgment is clearly within its *power*, where the Circuit Court has a discretion to render or to refuse to render the judgment, and where it has elected to exercise its power, render judgment and restore an imprisoned person to his liberty, who has been in custody in violation of the constitution of the United States. If a person be in custody in violation of the constitution of the United States, it may or may not be an abuse of discretion for the Circuit

Court to refuse to issue the writ, owing to the circumstances of the case, for the court might in such case, under some circumstances, remit him to his proceeding in error from the court of last resort of the State. But if the party be in custody in violation of the constitution of the United States, it can never be an abuse of discretion to grant the writ.

*Ex parte Royall*, 117 U. S. 247, *et seq.*
*In re Naegle*, 135 U. S. 57, *et seq.*

This appeal cannot, therefore, be decided upon the action of the court in entertaining the petition and granting the writ, without consideration of the question as to whether Rahrer was in custody *in violation of the constitution* of the United States; so that the first point made in appellant's brief is wholly unavailing, as the decision of the case involves consideration of the other questions involved, viz.: 1st, IS THE WILSON BILL CONSTITUTIONAL? and 2d, WAS THERE, AT THE DATE OF THIS ARREST, ANY LAW IN FORCE IN THE STATE OF KANSAS MAKING IT UNLAWFUL FOR THE APPELLEE TO SELL SAID LIQUOR IN SAID STATE IN THE ORIGINAL PACKAGE?

Unless both of these questions can be answered in the affirmative, the appellee was in custody in violation of the constitution of the United States; for if the Wilson bill is unconstitutional, then there is no pretense of any right or power in the State to prevent such sale; and if it be constitutional, and yet the State has never passed any *valid* law which could operate upon package sales, in that case the right of appellee, under the constitution of the United States, to make such sales is intact, and his arrest and subsequent custody for having exercised that right

constitute a violation of the constitution of the United States.

## WILSON BILL UNCONSTITUTIONAL.

The act of Congress of August 8th, 1890, entitled "*An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases*," commonly called "The Wilson bill," is in violation of the third clause of section 8 of article 1 of the constitution of the United States, and is void.

Said section 8 says: "The Congress shall have power" —and said third clause says—"to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The power thus vested in Congress is exclusive, and cannot be exercised by any other body or power whatsoever, in so far as its exercise is national or admits of but one uniform system.

"The power vested in Congress 'to regulate commerce with foreign nations and among the several States and with the Indian tribes,' IS THE POWER TO PRESCRIBE THE RULE BY WHICH THAT COMMERCE IS TO BE GOVERNED, *and is a power complete in itself, acknowledging no limitations other than those prescribed in the constitution.*"

*Leisy v. Hardin*, 135 U. S. 108.

"And certainly it has never yet been decided by this court that the power to regulate inter-State commerce, as well as foreign commerce, is not exclusively in Congress."

Case of the *State Freight Tax*, 15 Wall. (82 U. S.) 279.

"Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

*Cooley v. Board of Wardens, etc.*, 12 How. (53 U. S.) 319.

"Surely transportation of passengers or merchandise *through a State from one State to another is of this nature.* It is of national importance that over that subject there should be but one regulating power; for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may; and thus commercial intercourse between the States remote from each other *may be destroyed.* The produce of western States may thus be effectually excluded from eastern markets, for though it might bear the imposition of a single tax, it would be crushed under the load of many. *It was to guard against the possibility of such commercial embarrassments,* no doubt, that the power of regulating commerce among the States was conferred upon the Federal Government."

Case of the *State Freight Tax*, 15 Wall. 280.

"*A power to prevent embarrassing restrictions* BY ANY STATE *was the thing desired.*" Id. 275.

"Beyond all question, the transportation of freight, or of the subjects of commerce, *for the purpose of exchange or sale*, is a constituent of commerce itself. This has never been doubted; and probably the transportation of articles of trade, *from one State to another*, was the prominent idea in the minds of the framers of the constitution, when to Congress was committed the power to regulate commerce among the several States."

Case of *State Freight Tax*, 15 Wall. 275.

See also 118 U. S. 489, 120 U. S. 557.

Here permit me to inquire, Is Congress competent "to limit the effect of the regulations of commerce between the several States," which exist by virtue of the constitution itself, in such wise as to permit the States to regulate the *transportation* of goods from one State to another? Assuming the decision in 15 Wall. to be correct, Could Congress, for instance, have passed an act "to limit the effect of the regulations of commerce," so worded as to permit the State of Pennsylvania to impose "a tax upon

freight taken up within the State and carried out of it, or taken up without the State and brought within it?'' If so, what is to prevent Congress from so ''limiting the effect of the regulations of commerce between the several States,'' as to give the States full control of that feature of inter-State commerce which consists in *transporting* merchandise from one State to another?

SALE SAME AS TRANSPORTATION.

Can Congress, under the guise of limiting the effect of the regulations of commerce between the several States, so legislate as to transfer the control of inter-State transportation, which it is agreed on all hands is a thing national in its character, and requiring and admitting of but one uniform system or plan of regulation — can Congress, under any possible pretext, so legislate as to transfer the control of this feature of commerce to the varying regulations which would be suggested by the numberless interests, whims, caprices and passions of the forty-two States of this Union?

In *Leisy v. Hardin*, 135 U. S. 119, the Chief Justice rendering the opinion, quoting from *Bowman v. Chicago*, 125 U. S. 507, says:

''The absence of any law of Congress upon the subject is equivalent to its declaration that commerce in that matter shall be free. Thus, the absence of regulations as to inter-State commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the State, that its regulation can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled.''

The rule thus laid down in *Bowman v. Chicago &c. Rly.*

*Co.* and *Leisy v. Hardin* is, that *in the absence of any legislation by Congress, inter-State commerce* IS FREE. This doctrine of free commerce between the States, in the absence of congressional legislation, constitutes and is "the regulations of commerce between the several States" mentioned in the title of the Wilson bill, and which it is the alleged purpose of that act "to limit the effect of."

Where does this doctrine of free commerce between the States come from?

From the constitution of the United States.

What was its purpose?

To stand as a guaranty forever of the right of free commerce between the people of the several States.

What is its effect?

In its relation to each inhabitant of every State, it is the guaranty of a right.

It was to make secure this right that Congress was given exclusive power as to the regulation of commerce. This power vested in Congress to regulate inter-State commerce is not inimical to such commerce but exists for its protection and perpetuation.

To secure free inter-State commerce was one of the chief objects of the formation of the Union, and it was a mighty incentive to the boundless sacrifices made to preserve the Union.

"The Mississippi shall flow unvexed to the sea" was a slogan, a battle cry of the Union. Its meaning was free commerce between the States.

And again, how often in recent years have we been consoled for the loss of free trade with all nations by the assurance that we have free trade, *i. e.*, free commerce

between the States? How we have been felicitated and congratulated upon the fact by the greatest men of the country.

Can Congress, then, in the exercise of its exclusive power to regulate commerce between the States, so legislate as to destroy or prohibit that commerce?

Can Congress in the exercise of that power so legislate as to materially abridge the freedom of inter-State commerce?

If the constitution, in the absence of legislation by Congress, guarantees free commerce between the States, and if Congress was given the power of regulation for the purpose of protecting and perpetuating the freedom of inter-State commerce, it clearly follows that that commerce was intended to remain forever free, and that not even Congress, in the exercise of its power of regulation, could put upon it such limitations, checks and burdens as would reduce it substantially below the level of free commerce.

"And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States, which was deemed essential to a more perfect union by the framers of the constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce."

118 U. S. 573.

If Congress, in the exercise of its power to regulate inter-State commerce, may "limit the effect of the regulations of commerce between the several States," which arise from the constitution itself, and which we have seen make *free* commerce, then Congress may limit the free-

dom of commerce between the States which exists by the constitution. If Congress can *limit* the freedom of commerce between the States secured by the constitution, then it can limit it in any degree, or to any extent. It can limit it to the extent of its material abridgment, or to the extent of its complete destruction. Can it be possible that the power to regulate inter-State commerce, which was conferred upon Congress to insure its protection and perpetuation, can be employed for the purpose of its destruction, or of taking away from it that freedom with which it was invested by the constitution, and to protect which Congress was made its guardian?

The power to regulate inter-State commerce was conferred upon Congress because it was deemed dangerous to inter-State commerce to leave that power elsewhere. It was reposed in Congress in order that inter-State commerce might be safe. If this power was given to Congress to relieve inter-State commerce from danger, can Congress menace inter-State commerce with danger?

Take, for example, some of the cases cited in *Leisy v. Hardin*, and first the case, *Bowman v. Chicago &c. Railway Co.* In that case this court held that it was the duty of the common carrier to receive the goods of the shipper and take them to their destination, although the law of Iowa made it a penal offense so to do. And the decision proceeds upon the theory that under the constitution, and in the absence of congressional legislation, commerce between the States is free. The decision in this case involved that feature of commerce called *transportation*, and the court says that by the constitution it is untrammeled, unfettered, free! Can Congress trammel it, fetter

it, take away its freedom? Could an act of Congress providing that that free transportation which exists by the constitution should be so limited that a common carrier should not carry intoxicating liquors into the State of Iowa, except to such persons as the statute of Iowa had designated, have made the slightest difference?

Could an act of Congress providing that no common carrier should transport from one State to another any article forbidden to be transported into its borders by such latter State — could such an act of Congress have made any difference? And finally, could an act of Congress without reference to State legislation have been upheld which provided in explicit terms that no common carrier should carry a recognized article of commerce from one State to another, except to certain specified persons? Manifestly not. In every such case it would have been manifest that the effect of the legislation was to defeat the end of the constitution. Any such act would surely have been held unconstitutional, and the decision in *Bowman v. Chicago &c. Railway Co.* must in each event have been the same as it was.

Would the "statute imposing a burdensome condition upon shipmasters as a prerequisite to the landing of passengers," held to be unconstitutional in *Henderson v. New York*, 92 U. S. 259, have been any the less burdensome if enacted by the Congress of the United States, than it was as a statute of the State of New York? Would it have been any the less burdensome as a statute of New York, because Congress had enacted a statute "to limit the effect of the regulations of commerce between the several States," and had by that statute provided that the

shipmaster and his business should be subject to the operation and effect of the law of New York? Could an act of Congress which could be properly characterized as *burdensome*, or an act of Congress subjecting inter-State commerce to a burdensome State statute — could any such act of Congress be said to be the proper exercise of the power of Congress to regulate inter-State commerce?

And would the case of *Railroad Company v. Husen*, 95 U. S. 465, have been decided differently if the statutes of Missouri, which prohibited the driving into that State any Texas or Mexican cattle, whether sound or diseased, between the first day of March and the first day of November, in each year, if an act of Congress had provided that said commerce should be subject to the provisions of said State statute? Would that have been a regulation of commerce by Congress?

In the case of *Cook v. Pennsylvania*, 97 U. S. 566, would the statute of that State laying a tax on the sales of auctioneers have been made valid as to the imported goods, if Congress had by an act "to limit the effect of the regulations of commerce" subjected the imported goods to the operation of that statute? Would that have been a regulation of commerce by Congress?

Could the case of the *Wabash, St. Louis &c. Rly. Co. v. Illinois*, 118 U. S. 551, have been decided otherwise than it was decided had there been an act of Congress intended "to limit the effect of the regulations of commerce" between the "several States," in such wise as to make common carriers subject to such regulations and restrictions as the State might impose in reference to the transmission of

persons or property or telegraphic messages to another State? Most certainly it could not.

Could the case of *Robbins v. Shelby Taxing District*, 120 U. S. 489, have been decided otherwise by the fact of the existence of an act of Congress "to limit the effect of the regulations of commerce between the several States," so framed as to subject non-resident drummers who might offer for sale goods by sample, manufactured or belonging to citizens of other States, to the provisions of the Tennessee statute levying a tax upon such drummers? Surely not.

For if these things, which this court has over and over again held that no State can do in the absence of congressional legislation, may be done with congressional permission—if Congress may, by its assent, consent or permission, enable the various States to regulate the sale of foreign goods by foreign drummers; to regulate the carrying by railroads of inter-State traffic; to regulate and forbid the introduction from one State into another of cattle, whether sound or diseased; to regulate sales, at auction, of foreign goods in the original package; to impose burdensome conditions upon shipmasters as a prerequisite to the loading of passengers; to tax freight transported from State to State—if Congress may do all these things, or any of them, then Congress may, in like manner, enable the States to make not only every possible regulation of inter-State commerce which Congress itself might make, but to make regulations of inter-State commerce which even Congress could not make; (for I hold that not even Congress can prohibit, destroy or seriously abridge inter-State commerce.)

The power of Congress over commerce is not a power to destroy, but to build up, or rather to protect the people from being prevented from carrying on commerce, one State with another, and with all others. "*A power to prevent embarrassing restrictions by any State, was the thing desired.*" (Mr. Justice STRONG, in case of *State Freight Tax*, 15 Wall. 275.)

And yet we have this act of Congress, the title of which informs us that the purpose of the act is to *permit* embarrassing restrictions by any State. The title of the act says, that it is an act "to limit the effect of the regulations of commerce between the several States." By "the regulations of commerce," is meant the doctrine of free commerce under the constitution, in the absence of congressional legislation. Then the title means, An act to limit the effect of free commerce as it exists under the constitution; or, stated in another way, to limit the freedom of commerce as it exists under the constitution. Can Congress do this? If it can *limit* the freedom of inter-State commerce, as it exists under the constitution, it can abridge or destroy it. Again, I ask, is it possible that the constitution, in its great solicitude lest the States might destroy inter-State commerce, lodged the power of its regulation with Congress, only that Congress might destroy it?

BODY OF WILSON BILL COMPORTS WITH TITLE.

The act of Congress of August 8, 1890, provides:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police

powers, to the same extent and in the same manner as though such liquors or liquids had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages, or otherwise."

LAW OF KANSAS.

Now, the law of Kansas, to the operation and effect of which this act of Congress subjects such liquors, etc., consists of the tenth amendment to the constitution of Kansas, commonly called the prohibitory amendment, and the act of the Legislature of Kansas entitled "An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes."

Said tenth amendment to the constitution of Kansas is as follows, to wit:

"The manufacture and sale of intoxicating liquors shall be forever prohibited in this State, except for medical, scientific and mechanical purposes."

The statute of Kansas, or so much thereof as is necessary to be noticed for the purposes of this case for the present, is as follows:

"Any person or persons who shall manufacture, sell, or barter, any spirituous, malt, vinous, fermented or other intoxicating liquors, shall be guilty of a misdemeanor and punished as hereinafter provided: *Provided, however*, That such liquors may be sold for medical, scientific and mechanical purposes as provided in this act."

"It shall be unlawful for any person or persons to sell or barter for medical, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggists' permit therefor from the probate judge of the county wherein such druggist may be doing business at the time," etc.

"Any person or persons, without taking out, and hav-

ing a permit to sell intoxicating liquors, as provided in this act, or any person not lawfully and in good faith engaged in the business of a druggist, who shall, directly or indirectly, sell or barter any spirituous, malt, vinous, fermented or other intoxicating liquors, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days."

It is not claimed that either the appellee, Rahrer, or his principals, Maynard, Hopkins & Co., ever took out a druggist's permit or were or pretended to be in any sense druggists.

Such, then, is the law of Kansas, to the operation and effect of which the act of Congress in question by its terms subjects these conceded articles of inter-State commerce, beer and whisky. Whatever might be the effect in other States, where laws of a different character prevail, the effect of this act of Congress in Kansas, if held valid, is to enable the State of Kansas to *prohibit* inter-State commerce in articles recognized by Congress and throughout the world as articles of commerce; whereas, prior to the passage of the act of Congress, Kansas was powerless to do so.

The effect, therefore, of the act of Congress is *to confer a power upon the State of Kansas* which under the constitution she did not possess.

CONGRESS CANNOT CONFER POWER UPON A STATE.

Congress cannot confer any power upon a State of the Union.

Congress cannot pass any law investing the States with any power which they do not possess under the constitution, independent of congressional action.

If a State has not the power under the constitution to do an act, no act of Congress can supply the want of power.

If Congress can confer one power upon the States without the express sanction of the constitution, it can confer upon them, in like manner, every power possessed by Congress, and thus abdicate the legislative power of the Government of the United States.

Congress has power under the constitution to regulate commerce among the States, but that power of regulation cannot be so exercised as to render constitutional and valid State legislation which would otherwise be unconstitutional and void; for Congress cannot add to or take from the constitution, nor enlarge or diminish the limits of State action under the constitution.

An act of Congress, therefore, providing that the police power of the States may be exercised upon a particular article of commerce, upon which that power could not, prior thereto, be exercised for want of constitutional power in the States, is not an act regulating commerce, but it is an act attempting to delegate and surrender the power of Congress to the States.

CONGRESS CANNOT DELEGATE POWER TO THE STATES.

The power to regulate commerce does not carry with it the power of Congress to delegate or surrender that power to the States, or to any other power on earth. If the act took the form of a direct abdication, delegation or surrender of power, it would be greeted with derision and contempt from one end of the land to the other.

Congress cannot do indirectly that which it cannot do directly; therefore, if Congress cannot in direct terms

delegate, abdicate and surrender to the States its power to regulate commerce, it cannot, by the employment of permissive terms, through an act to allow the application of the police power of the States to particular subjects of commerce, turn over to the States the regulation of commerce among the States.

CONGRESS MUST PRESCRIBE THE RULE OF COMMERCE.

"The power vested in Congress . . . is the power to prescribe the rule by which that commerce is to be governed."

*Leisy v. Hardin*, 135 U. S. 108.

The rule of regulation of inter-State commerce must be prescribed by Congress. *It must express the will of Congress.* Congress, and Congress alone, must say what regulation, if any, shall be placed upon inter-State commerce.

This is so, not only because the constitution in express terms confers upon Congress that power of regulation, but because this court has, by an unbroken line of decisions, established the doctrine that inter-State commerce *is national in its character, and admits of but one uniform system or plan of regulation.*

Therefore I assert, that all regulation of inter-State commerce must be by Congress itself, must express the will of Congress, and must be uniform throughout the country.

Mr. Justice FIELD, in delivering the opinion of the court in *Welton v. State of Missouri*, 91 U. S. 280, makes use of the following clear, and, to my mind, unanswerable language:

"It will not be denied that the portion of commerce with foreign countries and between the States which consists in the *transportation and exchange of commodities, is of national importance, and admits and requires uniformity of regulation.* The very object of investing this

power in the General Government was to *insure this uniformity* against discriminating State legislation.

"The depressed condition of commerce and the obstacles to its growth previous to the adoption of the constitution, from the want of *some single controlling authority*, have been frequently referred to by this court, in commenting upon the power in question.

And yet the Wilson bill proposes to give the control over this important subject to forty-two different governments!

"The power to regulate commerce among the several States was vested in Congress in order to secure *equality and freedom* in commercial intercourse against *discriminating State legislation.*"

*Railroad Co. v. Richmond*, 19 Wall. (86 U. S.) 589.

In the case of *Pensacola Tel. Co. v. West Tel. Co.*, Chief Justice WAITE, in delivering the opinion of the court, and referring to the power of Congress to regulate inter-State commerce, said:

"The powers thus granted . . . were intended for the government of the business to which they relate *at all times and under all circumstances.* As they were intrusted to the General Government for the good of the Nation, it is not only the right, *but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.*"

96 U. S. 9.

It has been held, also, that under the clause giving Congress power to regulate commerce, it possesses power to punish offenses of the sort enumerated in section 9 of the act of 1825, for punishment of crimes against the United States.

*United States v. Coombs*, 12 Pet. 72.

May the State, also, punish offenses against its statutes regulative of commerce which it may upon appellant's theory enact by authority of Congress, and thus send to jail, or to the penitentiary, the citizen of another State, who undertakes within her borders to carry on commerce recognized as constitutional and lawful from the foundation of the Government to the date of the Wilson bill? If so, what is the Union worth? If so, how long will the Union endure? If so, why were rivers of blood shed and mountains of treasure expended to save the Union?

WILSON BILL DOES NOT REGULATE COMMERCE.

The Wilson bill is not an act regulating commerce between the States, or regulating commerce at all, by Congress. It purports to authorize the States to fix the rule which shall govern inter-State commerce in liquors. This pretended regulation not only lacks the element of *uniformity*, which we have seen is an indispensable requisite of the regulation of inter-State commerce, but, as the States prescribe, each for itself, any rule that it pleases to regulate inter-State commerce within its borders, the State, and the State alone, must *enforce that rule*. If the rule prescribed by the State is violated, the offender is not tried in the national, but in the State tribunals. If force is necessary to be employed in the enforcement of the rule, it is not the United States marshal, the army and navy of the United States, that is to be called into action, but the State constabulary, police, sheriff's posse and militia. That is certainly a very strange regulation of commerce by Congress which the executive and judicial departments of the national Government are powerless to enforce.

OPINIONS OF CONGRESSMEN.

Counsel for appellants, in their brief, quote at length from the opinions expressed by distinguished members of both branches of Congress during the debate upon the Wilson bill.

JUDGE REED, of Iowa, a member of the House, acknowledged and declared that everybody conceded that no act of Congress could enlarge any of the powers of the States, but he contends that the act in question prescribes a rule of inter-State commerce. He says (Appellant's Brief, p. 20): "These bills both (the Wilson bill and another) prescribe a rule for the regulation of commerce of that character, that rule being, that when the property is taken within the State and there held for sale, it shall be subject to such regulations as the State has enacted for the government of the traffic in articles of like character. That would be a direct regulation by Congress—as certainly and clearly a regulation as though we were to embody in a general statute the provisions of the Iowa prohibitory law and make it applicable to the traffic in intoxicating liquors imported into that State, either from foreign nations or from other States."

Not so. If Congress should embody the provisions of the Iowa or any other State law in a general statute, the regulations prescribed by the State law would then become, through their adoption by Congress, *regulations by Congress*, and being a part of the national law, would be enforcible in the national tribunals and by the national power.

But still if, even as suggested by Judge Reed, such a statute should, by its terms, be made applicable only to in-

toxicating liquors imported into that State, or into *any one State*, or into *any number of States* less than all the States of the Union, it would lack that uniformity which we have seen in an essential requisite of any valid regulation by Congress of inter-State commerce, it would be unconstitutional and void, and hence no regulation by Congress of inter-State commerce.

Senator George, also quoted by counsel for appellant, (Brief, p. 21,) flatly contradicts the position of Judge Reed. He (George) says, in substance, that the Wilson bill is a *grant of power* by Congress to the State. He says, in substance, that it is illogical and anomalous, but as, in his opinion, the States have, and always had, the power which it seeks to confer, he is satisfied to regard it as a recognition and concession by Congress of a power rightfully belonging to the States. Viewed as a grant of power, as has already been shown, it would be unconstitutional and void for want of power in Congress to confer such power upon the States; and as a mere *concession* or *recognition* by Congress of a preëxisting power in the States — in other words, a legislative construction or interpretation of the constitution — it would be powerless to overrule the oft-repeated decisions of this court, that the States possess no such power.

Senator Edmunds (Brief, p. 23) denied that Congress was, by the act, delegating power to the States, but declares that it creates an agency. He says: "We say to the State of Vermont, 'We employ you as the agent of Congress in the regulation of this traffic to determine whether the condition of things, as to the state of public morals there, will warrant this thing.'" And this he declares is a regulation

by Congress of inter-State commerce, and not the conferring or delegation by Congress of power. It will be observed that the inquiry as to what the form and character of regulation shall be is to be made by the States, and is addressed to *the state of public morals in the several States* of the Union, a subject wholly within the police power of the several States, and upon which Congress has no power to act. As Congress could not directly legislate with reference to the *public morals* in the several States, it is difficult to see how it could empower an agent so to do; and as the States have plenary power in that behalf, it is equally difficult to see how an act of Congress could be of any assistance to them, or in any wise extend their authority in that direction.

Then, again, as the States can, under the Wilson bill, do precisely as they please about making or not making regulations upon the subject, and about enforcing or not enforcing such regulations, and as Congress has, by the terms of the bill, turned the whole subject over to the States, over whose action it has not the slightest control, the theory of Senator Edmunds presents a case of agency wherein the principal has no control, either of the subject matter of the agency, or of the agent, and in which the agent is in no wise responsible to any principal. Nay, more: there are as many agents as there are States, and as many rules of inter-State commerce as there are agents; and yet, inter-State commerce is held to be national in its character, admitting of and requiring a uniform rule of regulation throughout the country. And, again: How can an agent be appointed without the delegation of power? And yet the Senator says it does not delegate power; 'sim-

ply appoints an agent. I trust I may be pardoned if I suggest that this is not a case of agency, but a case of assignment.

SENATOR HOAR, speaking of the decision of this court in *Leisy v. Hardin*, says: "They have not declared that the reserved power which the constitution leaves to the States, or to the people thereof, respectively, can be enlarged or abridged one whit by Congress. They have not undertaken to say that there can be any legislative action of a State of this Union, (unless, perhaps, it relates to some matter of national prosperity which we may cede to them,) which can derive the least vitality from any denial of our own power or affirmation of theirs by legislation. . . . They have undertaken to say that, recognizing the complete and exclusive control of Congress over inter-State and international commerce, Congress may also, by legislation, declare that certain subjects *shall not be, for legislative purposes, treated as subjects of inter-State commerce*," etc.

But even conceding, for argument's sake, that Congress possesses the power to do this, the question at once arises, Does the Wilson bill do this? The act in question provides in substance that, upon arrival of any imported liquor in any State, said liquor shall be subject to the operation and effect of the laws of such State, made in the exercise of its police power, the same as if said liquor had been produced in the State. Is this equivalent to saying that said liquors shall not, for legislative purposes, or any other purpose, be treated as the subject of inter-State commerce?

If Congress desired to say that intoxicating liquor should not be regarded as the proper subject of inter-State

commerce, it could easily say so in a few words, thus: "Whereas, great excitement exists in certain States of the Union respecting the traffic in intoxicating liquors; and whereas, the States are powerless under the constitution to exercise their police power over imported liquors while in the original package, owing to the immunity given by the constitution to all commercial commodities imported from foreign countries or from other States into any State: Now, therefore, be it enacted, that intoxicating liquors shall not after the passage of this act be treated, held or regarded as the subject of inter-State commerce."

Now such a statute would have exactly comported with Senator Hoar's idea.

But the Wilson bill does not even do that, for instead of providing that such liquors shall not be treated as the subject of inter-State commerce, it simply provides that on arrival in any State they shall be subject to the operation and effect of the laws made in the exercise of the police power of *that State*.

If the State in the exercise of its police power has made no laws that will by *their terms* reach the subject, then the status of these liquors remains unchanged. If the courts shall hold that any such laws made by the States, being in excess of State power when made, are not applicable to the subject, because as to that subject void *ab initio*, then the status remains unchanged in all the States without new legislation, which the States may or may not enact. And even if existing laws were held valid, if by subsequent legislation any State repeals any law upon the subject without passing another equally binding, then, in that State, the status would remain the same. If some of the States

should have laws that would reach the subject, and others not, which is and ever will be the case, then there would always be that want of *uniformity* of regulation under the Wilson bill which we have seen is a requisite of any regulation of inter-State commerce.

So that, in all these particulars, the Wilson bill falls far short of being even an efficient expression by Congress of its purpose to treat intoxicating liquors as not the subject of inter-State commerce, such as would be an act like the one indicated; for such an act as that indicated would at least have the merit of *uniformity*, and it would be the expression of the *desire* of Congress, whereas, the Wilson bill simply provides that the States may express *their desires*. If they desire one thing or another, it is all the same with Congress.

*Congress has no wish or will in the premises, except that the States shall be satisfied and shall express and enforce their will and wish* in as many ways as there are States, and as often as public opinion may change in any State. Congress is indifferent, *Congress has nothing to say;* and yet this is called a regulation by Congress of inter-State commerce, and a regulation by a classification of a subject which does not classify it.

But even such a statute as I have indicated, and which I have shown would realize Senator Hoar's ideal of congressional regulation in this case — even such a statute would come far short of being a *regulation* of inter-State commerce: it would be the mere expression of an opinion by Congress, a mere characterization of a subject by Congress, a mere congressional construction of the constitution as to what do and what do not constitute proper subjects

of inter-State commerce. Being without penalties, the national courts would be without power to enforce it or give effect to the desire of Congress evinced by it, and if a case should come before the national courts involving the question, the courts, following former decisions, would be compelled to hold that such liquors were the subjects of inter-State commerce, the opinion of Congress to the contrary notwithstanding. With the *mere opinion* of Congress the courts would have nothing to do, but would respect and be bound by previous judicial determinations of their own.

If it had been the intention of Congress to *regulate* inter-State commerce in such a way as to exclude intoxicating liquors from the category of things that are the subject of inter-State commerce, a plain, unequivocal and heroic method was open to it; for if Congress intended that such liquors should not be the subject of inter-State commerce, it intended that such liquors should not be *handled, transported and dealt with in inter-State commerce.* It should therefore have *excluded* such liquors from inter-State commerce; for if they are not the subjects of it, they should be *excluded* from it.

Congress could have reached the end by an act simply declaring in explicit terms that intoxicating liquors are not the subject of inter-State commerce, and that if any person shall treat intoxicating liquors as the subject of commerce by *carrying, hauling or transporting* the same from one State to another, or by *bartering, selling or otherwise disposing* of the same after such transportation, the person so offending shall be punished by a fine of———dollars, and imprisonment for———. Such an act would be a

regulation of inter-State commerce by Congress which *would regulate*, and it could be enforced in the national tribunals. The only question that would arise under such a statute would be, whether in the exercise of its constitutional power to *regulate* inter-State commerce Congress could *prohibit* it.

Now, Senator Hoar's view of the subject was, in my judgment, faulty, not only because his conception of what Congress ought to do would, if placed in statutory form, result at most in a mere expression of opinion by Congress; not only because the Wilson bill does not even realize that conception; but likewise because Congress, while collecting annually many millions of dollars as revenue upon the manufacture of liquor, while levying tariff upon imported liquor, and while receiving license fees from every liquor dealer in the country, whether selling in original packages or otherwise, could not be presumed by any equivocal expression to say that intoxicating liquors were not the subject of inter-State commerce. Such a presumption could not be indulged unless Congress should take the responsibility of passing an act so sweeping and stringent as to *prohibit* inter-State commerce in intoxicating liquors, as above indicated.

Senator Evarts said that, under the decision in *Leisy v. Hardin*, "... it is entirely competent for Congress to say whether or not, under the commercial clause, the introduction from abroad of imported liquors, or the introduction from other States into a State, shall operate to reduce the police regulations over these prescribed articles simply because they have come from abroad."

Here is an assumption of two things: *First*, that by

the rule promulgated in *Leisy v. Hardin*, the introduction from abroad of imported liquors, or the introduction from other States into a State, operates to *reduce* the police regulations over these prescribed articles; and *second*, that Congress may say whether said introduction of said articles shall or shall not have the effect to *reduce* the police regulations of the States.

Nothing could be more erroneous. The constitutional rule of free commerce, by virtue of which these imported liquors are introduced from abroad, and from State to State, does not *reduce* the police regulations of the States. It simply enables us to understand *what are* and *what are not* police regulations; simply establishes the boundaries of the police power. And the assumption that Congress may say whether this alleged reduction shall take place of course rests wholly upon the assumption that such reduction *does take place*. This failing, the second assumption fails also.

But even if this constitutional rule might be said to work a reduction of the police regulations of the States, Congress would be powerless to provide a remedy. As the supposed evil would in that case originate in the constitution, it could only be remedied by an amendment of the constitution. Besides,

CONGRESS CANNOT DETERMINE APPLICATION OF POLICE POWER.

If Congress had power to delegate or surrender to the States its power over commerce, this would not authorize it to delegate, surrender or confer powers not possessed by Congress. The exercise of the police power of the States is not a function of Congress, nor can Congress de-

cide when, how or under what circumstances the laws made in pursuance of the police power of the States shall apply, nor to what subjects they shall apply. The constitution alone can determine this. Therefore any attempt by Congress to confer power upon the States to apply their police power to a given subject, by re-elevating the States to a point from which the *constitution reduced* them at the foundation of the Government, is an attempt to do an act outside of and beyond the power of Congress; in short, it is an attempt to amend the constitution by act of Congress, and is void. *Leisy v. Hardin* does not hold that this can be done, as I will show further on.

APPELLANT RELIES ON THE THEORY OF A GRANT OF POWER BY CONGRESS TO THE STATES.

Though counsel for appellant have set forth in their brief, to sustain their argument, the opinions of four Senators and one Representative in Congress, all of whom were supporters of the Wilson bill, and no two of whom agree as to the theory upon which the constitutionality of the bill can be maintained, and not one of whom asserts a reason for its maintenance that will bear the test of a careful analysis — yet, being unable to reconcile these conflicting views, counsel are compelled to rest their contention upon the least insidious and most palpably vulnerable of all the grounds asserted by any of the distinguished gentlemen whose opinions, expressed in debate, are quoted as authority, viz., upon the ground of *a grant of power* by Congress to the States. After quoting certain expressions from *Leisy v. Hardin*, *Bowman v. Chicago &c. Railway Co.*, and *Leyng v. Michigan*, they say: "These repeated

utterances of this court, carefully and deliberately made, establish the *authority* of Congress to *grant* to the States permission to regulate the sales of intoxicating liquor in original packages imported from one State into another, to the extent and in the same manner as if the liquors were produced in the State where sold."

Here is the broad assertion that Congress can *grant* the States permission to regulate inter-State commerce. As the States are, under the constitution, without *power* to regulate inter-State commerce, to grant them permission to do so is to grant them *power* to do so, and it is in vain that counsel attempt to veil the bold, forbidding front of their position with the mild, misleading term, "permission."

If the constitution had provided that the States should regulate inter-State commerce with the permission of Congress, then the States would have been *invested* with the *power*, but its exercise would have been contingent upon the consent of Congress, precisely as is the case now under the constitution as to the laying of imposts or duties on imports or exports, except what may be absolutely necessary for the execution of its inspection laws, the laying of any duty of tonnage, the keeping of troops or ships of war in time of peace, the entering into any agreement or contract with another State or a foreign power, or engaging in war unless actually invaded. All these things the constitution says that no State shall do *without the consent of Congress*, implying, therefore, that the State may so do *with the consent* of Congress. Here the constitution of the United States reposes in the States, or rather leaves with the States, *a power*, but its exercise depends upon the

permission of Congress. In such a case, therefore, it would be eminently proper to say that Congress has authority to grant the States permission, for the action of Congress would be properly expressed by the word, "permission," or "consent," or "assent." Not so, however, where, as in the case at bar, the constitution has not invested the States with the *power* to act at all in the premises; for *permission* to do a thing implies *power* to do that thing with that permission, and where a State is powerless to do a particular thing, no amount of permission can supply the want of power. *From some source that State must obtain power to do that thing.*

As, therefore, under the constitution, there is no power in the State to do the act in question, Congress cannot grant permission to do so, *unless Congress can confer the power upon the State* to do so. This brings us face to face with the question,

CAN CONGRESS CONFER POWER UPON A STATE OF THE UNION?

If so, it can change the constitution of every State, and of the United States, and revolutionize our entire system of government—for it can transfer the power which it possesses under the constitution to the States. It can, of course, revoke any power which it can bestow. It can, therefore, build up and tear down States, exercise or revoke, annul or abdicate any power with which the constitution has clothed it. It can destroy the constitution and become and be a power unto itself, as omnipotent and uncontrolled as the British Parlament, and even more so; for while Parlament is not restrained by a written consti-

tution, it is held in check by the sentiments and traditions, the maxims and manners, and the crystalized customs of a thousand years, called the "British Constitution."

By section 10, article 1, of the constitution, it is provided that no State shall enter into any treaty of alliance or confederation. Would it be competent for Congress to "grant to the States permission" to do that? No State shall grant letters of marque and reprisal: can Congress "grant to the States permission" to do that? No State shall coin money: can Congress "grant to the States permission" to do that? And the States are further forbidden by the same section to "emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility:" can Congress grant to the States permission" to do these things? Manifestly not. These things the States are powerless to do, with or without the "consent" or "permission" of Congress. And the States are equally powerless, with or without the permission of Congress, to regulate inter-State commerce. Indeed the words "permission," "consent," and like expressions, are totally inadequate to express the idea involved in the consideration of the subject. Where there is a total and absolute want of power to do an act, that act cannot be done by the body thus lacking power, though the whole world *consent*, or *grant its permission*.

If from some source the necessary *power* can be obtained, this alters the whole matter. Until this is done there is a want of *power*.

NO CASES CITED BY APPELLANT—OBITER DICTUM.

Not a case is shown to have ever been decided where the power of Congress to "grant to the States permission" to regulate commerce has been in question. Nor is a single decision produced to sustain the theory that Congress is competent to confer *power* upon the States. In lieu of *authority*, certain expressions are seized upon which escaped the court in the course of its decision in *Leisy v. Hardin*, and in the case of *Bowman v. Chicago &c. Rly. Co.* Now the question presented by the case at bar was not involved in either of those cases, and therefore not therein *decided*, no matter what language the court may have used in the course of its decision of other questions. Indeed Senator Hoar, referring to the language relied upon in *Leisy v. Hardin*, in the very passage quoted from him by counsel, says, "Of course it is an *obiter dictum*." "But," he adds, (and upon this counsel for appellant evidently rely,) "the concurrent *opinion* of these nine great lawyers on *a grave constitutional question* before them, *which they are considering in all its relations*, even if not essential to the judgment which they are about to render, is entitled, I suppose, to the highest respect, a respect only surpassed by that which we owe to the constitutional judgment of the court itself." The fallacy of this reasoning consists in the fact that the *obiter dictum* of the Chief Justice, in writing the opinion, is treated as the *opinion* of the entire court, and again, in referring to the matter alluded to in the *obiter dictum* as "*a grave constitutional question before them, which they are considering in all its relations.*" Whereas, the question referred to by the Senator *the court was not con-*

*sidering at all*, as it was not involved in the case before the court, and comes before the court now for the first time. As it was an *obiter dictum*, it could not be said to be the *opinion*, even of the Chief Justice, to say nothing of the other Justices who concurred in the opinion and decision of the Chief Justice *upon the point decided*, but not necessarily in all of the reasoning, much less in all the language used in rendering the opinion.

This court has often given expression to a fact patent to all, viz., that the Justices may concur as to the proper decision to be given in a cause without agreeing in their reasonings about it.

The reasoning of counsel for appellant may be fairly stated thus: "As the court in *Leisy v. Hardin*, and in *Bowman v. Chicago &c. Rly. Co.*, *decided* that, in the absence of *any* action by Congress, inter-State commerce is free, but in the course of these decisions, as more *obiter dicta*, made use of expressions to the effect that the States could not regulate such commerce without the 'assent' or 'permission' of Congress, etc., and that 'the responsibility was upon Congress to remove the restrictions upon the States,' although no act of Congress purporting to give such 'assent' or 'permission,' or to remove such restrictions was drawn in question or considered, yet, notwithstanding these considerations, these expressions of the court are to be treated as the *opinion* or *decision* of the court, as much so as if an act of Congress similar to the one we are now considering had been drawn in question before them, and had been considered in all its relations, including its relation to the constitutional power of Congress to enact such a statute." It is hardly necessary to

say that that is a totally erroneous conception of the force and effect of the decisions referred to.

"It is a maxim not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, *but ought not to control the judgment* in a subsequent suit, when the *very point* is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

MARSHALL, C. J., in *Cohens v. Virginia*, 6 Wheat. 264, 399, 400.

So great a judge as MARSHALL used the language above, while explaining away some *dicta* of his own in an earlier case, *Marburg v. Madison*, 1 Cranch, 137.

It is far from disrespect for the decision of the court, therefore, to point out to the court that certain expressions used in a former decision did not and do not constitute the decision itself.

The "very point presented for decision" in this case was not decided in *Leisy v. Hardin*, nor in *Bowman v. Chicago &c. Rly. Co.*, nor has it ever been decided. That question is: HAS CONGRESS THE POWER UNDER THE CONSTITUTION TO GRANT TO THE STATES POWER TO REGULATE COMMERCE AMONG THE STATES?

The language of the constitution, the history of the constitution, the debates in the convention, the events which preceded and made necessary the constitution, the expressed and manifest purposes of the constitution, as well as the interpretation placed upon it by this high court from

the organization of the court to the present hour, all forbid the idea that Congress has any such power.

It will not be forgotten that the convention which framed the constitution had for its precursor the Annapolis convention of 1786, the aims and purposes of which were solely commercial; that Hamilton, who was without doubt the chief architect of the federal constitution was the chief spirit of the Annapolis convention; that that convention proposed an address to the States, which was written by Hamilton, and adopted Sept. 14, 1786. It asserted that important defects existed in the *commercial* system of the Federal Government; that in consequence embarrassments characterized the existing state of our national affairs, both foreign and domestic; that the best remedy for these would be the assembling of a general convention from all the States, and fixing the second Monday of May, 1787, as the time, and Philadelphia as the place of assemblage of such convention.

Thus the germ from which sprang the convention which framed the constitution was the Annapolis convention, the aims and purposes of which were *solely commercial*; so that it can be asserted with perfect safety, that but for commercial considerations the constitution of the United States would probably never have been formed. Nor is this matter of wonder, when it is borne in mind that the articles of confederation expressly reserved to the States respectively the right to impose imposts and to exercise full control over commerce. Article 9, after conferring upon Congress the right and power of determining upon peace and war, except, etc., sending and receiving ambassadors, making treaties, etc., continues as follows: "Provided, that no

treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, *or from prohibiting the exportation or importation of any species of goods or commodities whatever.*''

It is this last clause which counsel for appellant seek to have incorporated into the constitution of the United States by the Wilson bill, instead of that which provides that ''Congress shall have power . . . to regulate commerce with foreign nations and among the several States and with the Indian tribes.''

Further on in the same section, where the power of Congress is asserted ''of regulating the trade and managing all affairs with the Indians, not members of any of the States,'' it is ''provided that the legislative right of any State within its own limits be not infringed or violated.''

The wretched commercial chaos which existed under the confederation was the legitimate result of these very provisions of the articles of confederation. No one subject of public necessity perhaps exerted a more powerful influence in bringing about the adoption of the federal constitution than the recognized public necessity of conferring on Congress the sole power to regulate foreign and inter-State commerce. It may almost be said that it abrogated the articles of confederation and produced the constitution; and yet we are seriously asked to return to that system, in order to accommodate the constitution to the caprice of some four States, superinduced by political emergency and supposed partisan necessity.

A brief recourse to this history, whilst presenting noth-

ing new, is not without its use in this discussion. Under the articles of confederation, there was scarcely a State in the Union which did not set up and assert for itself some regulation of commerce; the inevitable consequence of which was to produce commercial anarchy, discriminations, repressions and reprisals among the several States. "From which," Chief Justice MARSHALL said, "grew up a conflict of commercial regulations destructive to the harmony of the States and fatal to their commercial interests abroad." This distinguished jurist, in *Gibbon v. Ogden*, 9 Wheat. 225, speaking of this subject, said:

"As early as 1778, the subject had been pressed upon the attention of Congress by a memorial from the State of New Jersey; and in 1781, we find a resolution presented to that body, by one of the most enlightened men of his day, affirming that 'it is indispensably necessary that the United States in Congress assembled should be vested with a right of superintending the commercial regulations of every State, that none may take place that shall be partial or contrary to the common interests.' The resolution of Virginia, appointing her commissioners to meet commissioners from other States, expresses their purpose to be, 'to take into consideration the trade of the United States, to consider how far an uniform system in the commercial regulations may be necessary to their common interests and their permanent harmony.' And Mr. Madison's resolution, which led to that measure, is introduced by a preamble entirely explicit to this point: 'Whereas, the relative situation of the United States has been found, on trial, to require uniformity in their commercial regulations, as the only effectual policy for obtaining, in the ports of foreign nations, a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States, for preventing animosities which cannot fail to arise among the several States, from the interference of partial and separate regulations,' etc.: 'therefore, resolved,' etc."

And again, in *Brown v. State of Maryland*, 12 Wheat., he again said:

"The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests, and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties, but the inability of the Federal Government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object in the attainment of which the American people took, and justly took, that strong interest which arose from a full conviction of its necessity."

And Mr. Hamilton, in the *Federalist*, after asserting that one of the chief purposes to be accomplished by the Union was the regulation of commerce with other nations and between the States, said:

"The unity of commercial as well as political interests can only result from a unity of government; *that the competitions of commerce would be fruitful sources of contention. . . . Each State or separate confederacy would pursue a system of commercial polity peculiar to itself; this would occasion distinctions, preferences and exclusions. . . . The infracton of these regulations on the one side, and the efforts to prevent and repel them on the other, would only lead to outrages, and these to reprisals and wars.*"

There is, therefore, unanswerable reason for the proposition that, as the incentive for taking this power away from the States and conferring it on Congress was to promote and secure to the people of all the States enlarged and uniform commercial intercourse, to prevent discriminations, exclusions and reprisals among States it was contemplated by the framers of the constitution that any law enacted by Congress in the exercise of the power conferred should be uniform in its operation, tending to freedom, equality and liberty of commerce among the States and with foreign nations. And it would as logically follow that any act of Congress which put it in the power of any one State to exclude from its borders the products of other States recognized as a commercial commodity, or to so limit and hamper its introduction as to practically repel its coming, would be violative of the spirit and design of the constitution.

Conformably to this idea, Chief Justice MARSHALL, in *Gibbons v. Ogden*, supra, said, "Commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term." If commerce is a unit, how can it be subject to legislative control which is not a unit? How can a unit be subject to the operation of forty-two legislative forces?

Again, he said, "Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior." But the Wilson bill stops it at the boundary of the State. And again, in *Brown v. State of Maryland*, it is said that an essential part of the power of regulation "and principal object of it is to prescribe the regular means for accomplishing that introduction and in-

corporation." But the Wilson bill not only authorizes forty-two different means of introduction but authorizes a refusal to introduce or incorporate.

Mr. Justice MATTHEWS, in *Bowman v. Railway Company*, 125 U. S. 493, used this significant language:

"In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States."

And yet the title of the Wilson bill says the act is "to limit the effect of the regulations of commerce," *i. e.*, limit the freedom of commercial intercourse between the States.

And Mr. Justice FIELD, in his concurring opinion, said:

"Where the subject is national in its character, and admits and requires uniformity of regulation affecting alike all the States, such as transportation between the States, including the transportation of goods from one State into another, Congress can alone act upon it and provide the needed regulation."

And yet the Wilson bill provides for as many different regulations as the forty-two States of the Union may think are needed.

And Mr. Justice BRADLEY, in *Brown v. Houston*, 114 U. S. 630, said:

"The power of Congress is exclusive wherever the matter is national in its character or admits of one uniform system or plan of regulation."

These utterances would seem to be but responsive to the historic fact that among the purposes for lodging this power in Congress was the importance of having the common federal head adopt a common rule — in short, establish a system generally recognized and uniform in its application; so that, when a citizen of one State or a

foreign importer wished to ship his commodities into any State of the Union, he would look alone to the legislative acts of Congress to be advised of any regulation to which the admission of his goods would be subject.

Chief Justice MARSHALL, in *Gibbons v. Ogden*, supra, said:

"The power to regulate foreign commerce is given in the same words and in the same breath, as it were, with that over the commerce of the States and with the Indian tribes. But the power to regulate foreign commerce is necessarily exclusive. The States are unknown to foreign nations; their sovereignty exists only with relation to each other and the General Government. Whatever regulations foreign commerce should be subjected to in the ports of the Union, the General Government would be held responsible for them; and all other regulations but those which Congress had imposed would be regarded by foreign nations as trespasses and violations of national faith and comity. But the language which grants the power as to one description of commerce, grants it as to all."

By the terms of the Wilson bill, Congress does not itself in terms prescribe a general uniform rule respecting the admission of liquors into the States, so that the foreign importer may know to what law or rule his liquors may be subjected when they land at the port of entry in any State, nor does it prescribe a rule uniform and applicable alike in every State in the Union; but it simply declares that upon its arrival in any State it shall be subject to the operation and effect of the laws of such State enacted in the exercise of its police powers. It is not only subjected to the operation of State laws existing at the time of the passage of this bill, but it shall be subject to the operation of such laws as may be enacted hereafter and in force at the time of importation.

This commodity, therefore, which is recognized by the usage of the commercial world, and by Congress itself in the matter of taxation, impost and excise, and by over nine-tenths of the States of the American Union, as a subject of manufacture, barter, trade and exchange, is subjected by this bill to such restraints and exclusions as each State may see fit now or hereafter to impose upon its admission. It is thus placed in the power of any State to practically exclude it, or to meet it at the border and treat it as a common enemy, while the great body of the States may treat it as a commercial, merchantable commodity. And the question is not free from doubt, that in those States which have not subjected it and will not subject it to prohibitory laws, such liquors would not remain subject to the power of Congress to regulate it. For such States would have prescribed no regulation respecting its importation, and the rule established by the Supreme Court is, that in the absence of such regulation Congress "thereby indicates its will that such commerce shall be free and untrammeled;" and, of cousre, as to those States, it continues subject to the power of Congress. The bill is so broad in its provisions as to embrace (and as indicated by the debates thereon in Congress it was intended to embrace) liquors and wines shipped from Europe to this country; so that a foreign importer, notwithstanding international treaties between his government and the United States, would have to look beyond this act of Congress, and seek to discover what police regulations a minor sovereignty of the United States had prescribed respecting such commodity. What, then, becomes of the doctrine asserted by Chief Justice MARSHALL,

that "the States are unknown to foreign nations," and that "whatever regulation foreign commerce should be subjected to in the ports of the Union, the General Government would be held responsible for them, and all other regulations but those which Congress had imposed would be regarded by foreign nations as trespasses and violations of national faith and comity."

Suppose, for instance, woolen and linen goods were substituted for intoxicating liquors, etc., in this bill, and a State should enact a law under claim of the exercise of the police power, and upon the theory that such articles were hurtful to the local prosperity and welfare of the State, of which its Legislature, as is asserted by some political doctrinaires, must alone be the judge, and a merchant in London or Paris, on an order from a merchant at ————, should ship to the port of entry of ———— a large quantity of such manufactured goods, and such goods should be seized and destroyed by the State authorities on their arrival at port: would such a law and such an act be defended on the ground of its constitutionality as a regulation of commerce by Congress? and could the Government escape its liability in the *jure gentium* of the value of the goods?

The power to regulate commerce being lodged in Congress, the jurisdiction of Congress over the subject matter is exclusive. It is a unit, and indivisible. There can be no copartnership in its use and exercise between the General Government and the State government. As already shown, the power was taken away from the States because it was known and felt to be a dangerous and hurtful power in the hands of the State. The design of the constitution

was to make Congress the sole depository of this power. Therefore, Congress being the sole constituted agent of the whole people for the exercise of this power, it cannot delegate it to any other agent or instrumentality. This all jurists, lawyers and legislators concede. As it cannot delegate this power, as it cannot confer this power upon the States, as the States are destitute of this power and cannot do this thing without this power, how can Congress *enable* the States to do this thing?

CONSENT, ASSENT, ETC.

The acts regulative of commerce, which it is claimed the States may do with the "assent," "consent" or permission of Congress, will be found upon examination of the cases to be none other than such as are local in their nature, being mere aids to commerce, and in no way in conflict with the exclusive power of Congress over inter-State commerce. These cases comport with reason, for if the States assert control over any other kind of acts, then they touch matters which are subject to the exclusive control of Congress. The moment that Congress assents to the control of such matters by the State, it has no longer exclusive control, henceforth the control is divided; and if Congress may thus yield any part or portion of its exclusive power to regulate commerce, it may in like manner yield it all, and the end which the constitution had in view in depositing that power with Congress is defeated.

It will not be contended by any one that Congress can, under the guise of "assenting" or "consenting" to State legislation, defeat the purpose of the constitution, which was to prevent the States from burdening, abridging or

prohibiting commerce. The Wilson bill does exactly what it was the purpose of the constitution to prevent. It defeats the end sought to be attained by the constitution, and is therefore unconstitutional and void.

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## STATE STATUTE IN EXCESS OF POLICE POWER NEVER EXISTED.

Legally speaking, a State cannot be said to have done a thing which it had no power to do. At the date of the adoption of the tenth amendment to the constitution of Kansas, and at the date of the prohibitory law, the State had no power to pass any law which would forbid or make criminal the sale in the original package of liquor imported into the State. Therefore the tenth amendment, notwithstanding its language would seem to include *all* liquors, has no reference to such imported liquors sold in the original package. And the statute of Kansas called the prohibitory law, notwithstanding its language would seem to include all liquors, has no reference to such imported liquors sold in the original package, because, as the State had no *power* to make a statute to control such sales, therefore the State has not made a statute to control such sales.

A statute is the expression of the will of the people through the Legislature. The people acting through their Legislature cannot, legally speaking, will to do that which they have no power to do; therefore, if they have appeared to do so, yet nevertheless they have not done so, and the statute is to be considered precisely as if it con-

tained a proviso expressly excepting such sales in the original package. If such were the case, would the Wilson bill subject the liquor in the original package to the State statute in its very terms, without the exceptions, or as it would read with the exceptions contained in it? Most certainly it will not be contended that if the State had not willed that a particular statute containing penalties should apply to such liquors in the original package the Wilson bill would nevertheless *compel* the State law to have that effect, for in that event the Wilson bill not having incorporated the State law into the law of the United States, and the State law being enforcible solely in the tribunals of the State, we would have the anomalous spectacle of a State statute extended beyond the limits of the State's power; in other words, a State statute amended and portions of it cast out, or something added to it, by act of Congress — in short, a State statute in full force in the tribunals of the State which the State Legislature never enacted, and which the people of the State never willed should be their law.

A State court cannot exercise jurisdiction conferred upon it by Congress.

*Ex parte Knowles*, 5 Cal. 300.

*Stearns v. United States*, 2 Paine, 300.

*Ex parte Stevens*, 70 Mass. 559.

*Ex parte Pool*, 2 Va. Cas. 276.

*Prigg v. Penn*, 16 Pet. 539.

Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself.

*United States v. Ames*, 1 Wood & M. 89.

*The British Prisoners*, 1 Wood & M. 66.
*Martin v. Hunter*, 1 Wheat. 304.
*Houston v. Moore*, 5 Wheat. 1.
3 Serg. & R. 169.

The cases above cited are not precisely in point, but they serve to present in a strong light the inquiry, If Congress cannot confer jurisdiction upon a State court, so as to make it a judicial arm of the United States, how can it, by any act of its own, alter the effect of a void statute of a State, or of the void portion of a statute of a State.

JUDGE CALDWELL'S DECISION.

Counsel for appellant call to their assistance the recent decision of Judge CALDWELL, of this circuit, in the Van Vliet case, which arose recently in Iowa.

While entertaining the highest respect and esteem for the learned judge who delivered that opinion, I am constrained to differ from him, as I believe he totally misconceived the question decided.

Judge CALDWELL, as quoted by counsel for appellant, (Brief, p. 28,) said:

"It is said the Supreme Court declared these laws to be unconstitutional, in so far as they prohibit the sale of liquor by the importer or his agent in the original packages, and that Congress could not, in the language of the learned counsel, 'vivify a dead statute.' There are two answers to this contention: The first is, the act of Congress relegates the original package of liquor, on its arrival in the State, to the laws of the State passed in the exercise of its police power. And there is not now and never has been any doubt of the validity of those laws."

Precisely here the judge falls into an error, for counsel contending before him was not only expressing doubt of the validity of so much of those laws as authorized inter-

ference with liquor in original packages, but was urging the utter invalidity of so much of the statute, or in other words, of the statute for that purpose, and was asserting that no act of Congress could render valid the invalid portion of that statute; that no act of Congress, as he expressed it, could "vivify a dead statute" of a State.

The only question, therefore, is, Was any portion of the statute in question invalid prior to the act of Congress? If so, it remains so.

Judge CALDWELL says truly, "the act of Congress relegates the original package of liquor, on its arrival in the State, to the laws of the State passed in the exercise of its police power." But it does not relegate it to any law of any State *not* passed in the exercise of its police power; nor to any part of any law not passed in the exercise of its police power; nor to some part of some supposed law that never existed.

Now, so much of the law of Iowa as by its terms authorized any interference with the original package *was not passed in the exercise of its police power, because it was not within the police power of the State to pass such part or portion of such law. So much of such statute was never passed at all and never existed.*

Again, Judge CALDWELL says:

"What was decided by the Supreme Court was this, that the Iowa law was broad enough in its terms to embrace all liquors and all sales of liquors by every person, but that this law, under the constitution of the United States, was inoperative on liquor imported into the State as long as it remained in the original packages, and could not be applied to the sale of liquor in the original package by the importer in the absence of congressional permission, and that any application of the law to original packages,

in the absence of congressional permission, was unconstitutional, and an invasion of the constitutional rights of the importer."

Here the judge wholly misconceives the decision in *Leisy v. Hardin*. It was not decided that the Iowa statute was, as to imported liquors in original packages, simply "*inoperative*."

It was not simply decided that "any *application* of the law to original packages" was unconstitutional. It was not the "*operation*" of the law which was held to be unconstitutional. It was not the *application* of the law which was held to be unconstitutional, but THE LAW ITSELF, IN ITS VERY TERMS. The closing sentence of the Chief Justice, in *Leisy v. Hardin*, is in these words: "The legislation in question is, to the extent indicated, repugnant to the third clause of section 8 of article 1 of the constitution of the United States," etc.

"THE LEGISLATION" is unconstitutional to the extent indicated. To the extent indicated by what? By the language of the act.

By what language of the act? By the words "ANY intoxicating liquor."

The act, therefore, *in its very terms*, as it stood, with these comprehensive and all-embracing words in it, was unconstitutional before the passage of the Wilson bill. Because of the presence of these words, it was unconstitutional as to the *import* of these words at the date of its passage and every hour thereafter up to the passage of the Wilson bill. Does the passage of that act of Congress operate to render these unconstitutional words of a statute of a State constitutional?

The statute with these words in it *is not now and never was in existence*, because of want of power in the State to put these words in a statute at the date of the passage of the act.

The statute, as it exists for enforcement by the State, *does not exist in its very* LANGUAGE, but has, by operation of constitutional principles, interpolated into it an exception in favor of the liquor imported in the original package. This exception the constitution of the United States put into the statute in spite of the *futile phrase* of the Legislature. As the expressed will of the State, therefore, it stands with the exception placed in it by the constitution, and to attempt to enlarge its scope by an act of Congress is for Congress to attempt to enlarge the scope of the expressed will of the people of Iowa.

Again, Judge CALDWELL says: "The court did not declare the statute of Iowa 'void' but in legal effect declared its 'extension' or 'application' to liquor in the original packages in which it was imported, in the absence of congressional sanction, unconstitutional." With deference I assert, that the court did not in legal effect declare the "*extension*" or "*application*" etc., of the Iowa statute to be unconstitutional, but declared *the statute itself in its very terms to be unconstitutional*. This, however, did not condemn the statute *for all purposes*, but left it standing in "legal effect" in such diminished terms as would express the will of the people to exercise the whole power of the State and no more.

Again, Judge CALDWELL says: "If the statute had any legal implication on this subject, it was that the act should not be operative on original packages or the sale thereof

by the importers until Congress should give its consent thereto." But how could a statute contain an implication that Congress could or would give its consent to such portion of a statute as *was void ab initio for want of constitutional power in the State to enact it?*

Again, Judge CALDWELL says: "An act of the Legislature will not be declared unconstitutional in *whole or in part* where the legal implications fairly deducible from the act will harmonize it with the constitution." What Judge CALDWELL perhaps meant to say was, that an act of the Legislature will not be declared unconstitutional *as a whole* when the legal implications fairly deducible from it will harmonize *any part* of it with the constitution; or, in other words, that a statute will only be held to be unconstitutional to the extent to which the legal implications fairly deducible from it *will not* harmonize it with the constitution.

When the judge says that the act will not be held unconstitutional in *whole* or in *part* where the legal implications fairly deducible from the act will harmonize it with the constitution, he evidently means, to take the act as it stands, with the legal implications as a part of it, and in this view there is no disagreement between us; for if the legal implications must be superadded in order to harmonize the statute with the constitution, then it must needs follow that without the legal implications it would be unconstitutional, which is precisely the case at bar. The statute as it stands, *in its very terms*, without the legal implication, is unconstitutional. *With the legal implication*, consisting of an interpolated exception in favor of original packages, it is constitutional *pro tanto*, and the kindness

of the constitution in interpolating an exception is all that saves it at all for any purpose. Judge CALDWELL places the counsel for Van Vliet in the position of questioning the constitutionality of the act as it stood after being harmonized with the constitution by a legal implication, whereas the counsel was only questioning its constitutionality in its very terms, as it stood in the absence of the implication; so that, if we take the judge's own contention, it is apparent not only that he misconceived the contention of counsel, but that he himself has given utterance to the very idea for which the counsel was contending, viz., that the act would not be declared unconstitutional where a legal implication would save it, *i. e.*, to the extent to which a legal implication would save it, but would be held unconstitutional as it stood without the legal implication. For what is it that is saved by the legal implication? Is it the statute as it read in its very terms as it came from the Legislature, or is it the statute as it reads with the legal implication superadded? Manifestly the latter.

Again, Judge CALDWELL says: "It was always competent for Congress to invest the State with authority to apply its police regulations to liquor upon its arrival in the State," etc.

Competent for Congress to *invest* the State with *authority!* Here the power of Congress to confer *power* upon the State which is forbidden by the constitution is openly asserted. As I have fully argued this question in preceding pages, I will not dwell upon it here.

From this postulate the learned judge argues, that the Congress could ratify the act of the Legislature which it

could authorize it in the first instance to pass. The fallacy of this reasoning, however, is in the fact that Congress could not "authorize" the Legislature to pass any act whatever; and secondly, that the Wilson bill does not pretend to "authorize" the Legislature to pass any specific legislation, or any legislation whatever. It says to the States in effect: "Do as you please; pass any legislation you please, or no legislation, and Congress will be content. Congress has abdicated its control of commerce to the States."

The reference to Dillon on Municipal Corporations only serves to emphasize the error of the learned judge's position.

The State may, of course, ratify acts of municipal corporations, for the State is the source of their power—the fountain of their authority. But Congress is not the source of the power of the States. Congress is not the fountain of their authority.

KANSAS PASSED NO LAW TO REACH ORIGINAL PACKAGES IN THE EXERCISE OF ITS POLICE POWER.

Bearing in mind, therefore, the provision of the Wilson bill, viz., that such liquors shall, upon their arrival in the State, be subject to the operation and effect of the laws of the State passed in the exercise of its police power, and bearing, also, carefully in mind, just what law the State of Kansas had passed prior to the Wilson bill, *in the exercise of its police power*, and we will find that the State of Kansas had not passed any such statute as counsel seem to think; for the State of Kansas did not actually pass the act relied on *in its very terms*, for want of power in the State of Kansas so to do.

It is true the State of Kansas attempted to do so, but did not succeed.

The Legislature placed upon the statute book and supposed it had enacted into law the statute that provides that "Any person or persons who shall manufacture, sell or barter *any spirituous, malt, vinous, fermented or other intoxicating liquor* shall be guilty of a misdemeanor." The State of Kansas had not power under the constitution to enact a statute so comprehensive; therefore, the State of Kansas did not enact that statute *in its very terms*, but enacted the statute with a proviso implied by the constitution of the United States excepting from the provisions of the statute liquors imported into the State and sold in the original package. The statute, as it came from the Legislature, contained this implied exception. The exception was as much a part of the statute as the enacting clause. The exception remained in the statute always, and remains in it yet; so that the statute, although *in its very terms* it is unconstitutional, yet, with the exception embraced in it, is constitutional; but it will no more reach the original package than it would before the passage of the Wilson bill; so that until the State, in pursuance of its police power, passes some act which will reach such case, the Wilson bill makes not one iota of difference in the situation. And this thought brings to mind the utter absurdity of the whole contention of the State; for if the State could not enact a law in pursuance of its police power which would reach packages prior to the Wilson bill, how can it do so now, seeing that its constitutional powers, its police powers, have not been enlarged by the Wilson bill?

OPINION OF JUDGES FOSTER AND PHILLIPS.

Below I set out the principal portion of the opinion of Judges FOSTER and PHILLIPS rendered in this case, sitting as the Circuit Court for this circuit.

"THE CLAIM OF THE STATE.

"It is not claimed nor pretended by the attorneys for the State that the petitioner, previous to the passage of the Wilson bill, was engaged in a business violative of any law of the State; but they do claim that, immediately after the passage of said bill by Congress, the petitioner's business became and is a violation of the prohibitory law of the State. So that the proposition stands in this form: On the 7th day of August, 1890, sales made by the petitioner were permissible and lawful under the constitution of the United States, the prohibitory law of the State to the contrary notwithstanding; therefore, if on the 9th day of August, 1890, the same act of the defendant is taken from under the protection of the federal constitution, and is a violation of the same prohibitory law of the State, the conclusion would seem to be inevitable that this changed condition of liability is because of the enactment of Congress on August 8, 1890. In brief, the contention of the State is, that the act of Congress enlarged the scope and operation of the act of the State Legislature, making that which was a legitimate business one day a crime the next, not under any law of Congress, but against the law of the State. There is nothing in the wording of the act implying that Congress assumed such a power or intended to give such effect to this enactment.

"At the time Congress passed the Wilson bill it was well known and recognized that the Supreme Court had decided that such a State prohibitory law was void, in so far as the dealer in imported liquors in the original package was concerned. In other words, there was no law, and could be no law, in existence making such business a crime. It cannot be assumed that Congress desired to introduce into the present police laws of the State an article or subject hitherto not included by those laws. How could Congress know that the people of all, or any of the States, on August 8, 1890, desired to have such object or article em-

braced in their police laws? and Congress has not undertaken to arrogate to itself any power or control over that subject.

"In employing the words 'shall be subject to the operation of the laws of the State,' Congress did not use them in a mandatory but in a permissive sense. The most ardent and enthusiastic advocate of a strong central government would spurn the idea that Congress assumed to dictate or convey a mandate to the several States in the matter of the exercise of their police power.

"On the contrary, the Wilson bill left it to the free and untrammeled action of the several States to determine whether they would or would not include within their police laws this particular article of commerce. Every State in the Union probably has upon its statutes some police regulation of the traffic in intoxicating liquors. These statutes, as a rule, exempt from their operation, either in express terms or by implication, imported liquors and their sale in original packages. In some of the States the exception was expressed, as in the Iowa prohibitory law of 1888, and the old New York law of 1855, and in all cases where not expressly reserved, the law of the land, as declared by the supreme judicial tribunal, supplied the exception; thus indicating the general consensus that hitherto it was not recognized as among the police powers of the State to regulate or interdict among the States the traffic in imported liquors.

"The decision in *Leisy v. Hardin*, supra, but emphasizes this fact and principle. The prohibitory law of the State of Kansas, where it touched upon inter-State commerce, was no law at all, at the time of this enactment nor since. Judge COOLEY says:

"'"UNCONSTITUTIONAL LAW" A MISNOMER.

"'The term unconstitutional law, as employed in American jurisprudence, is a misnomer, and implies a contradiction, that enactment which is opposed to the constitution being in fact no law at all.' (Cooley on Constitutional Limitations, 3.)

"Again, at page 187, this same author says:

"'When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their construction are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of

an act void *in toto*, is true also as to any part of an act which is found to be unconstitutional, and which consequently is to be regarded as having never at any time been passed and in legal force.'

"How then can the act of Congress in question have the effect and operation claimed for it by the attorneys for the State? For it must be kept in mind that a legislative act in conflict with the constitution is not only illegal or voidable, but it is absolutely void.

"For illustration: Section 10 of article 1 of the federal constitution declares that 'No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.' Suppose a State should pass any of these prohibited acts, and after its passage the constitution should be amended by the assent of the requisite number of States, and the foregoing section dropped altogether, so that there was no longer any restriction on the States in this particular: would any one contend that a prior enactment in the face of the constitution, dead at the time of its enactment for the want of life-giving power, would at once arise from its tomb and become a living, actual, lawful thing?

"CITING A PARALLEL CASE.

"Suppose the Legislature of Kansas, in these times of imputed financial distress, should enact a law providing that in all cases of judicial sales of real estate hereafter made on foreclosure of mortgages there should be a stay of execution for one year after judgment. Such a law would seem fair on its face, and would be in general terms like that of the prohibitory law of the State. The courts unquestionably would hold that as to judgments rendered or mortgages executed prior to such enactment the statute was inoperative and void, because it impaired the obligation of contracts, and was in violation of section 10 of article 1 of the constitution, although it might be held to be a valid law as to subsequent contracts — good in part and bad in part. Now, suppose the constitution should be amended and section 10 should be excluded: could it be maintained that this act of the Legislature would become a valid law as to prior contracts without further legislation?

"Where is the distinction between the supposed case and the one at bar? In either case the Legislature undertook to legislate on a matter forbidden to it by the constitution; in the one case prohibited in terms, and in the

other taken away and denied to it by a delegation of all power over the subject matter to Congress.

"If the constitutionality of the Wilson bill is to be upheld upon the theory, as claimed by its advocates in the debate thereon in the Senate of the United States and in the argument at this hearing, that Congress, in the exercise of its power to regulate commerce among the States and with foreign nations, simply decided or declared that its jurisdiction should be confined to certain subjects matter of commerce, or that certain subjects matter and things which may be considered subjects of commerce should thereafter be excluded from its jurisdiction under the commercial clause of the constitution, and the traffic in intoxicating liquors should thereafter be classified and remitted to the subjects within the police power of the State, such a law under every rule of construction must be prospective in the operation. And it must further be conceded that as the right of the State to treat such an article of commerce as subject to laws passed by the State in the exercise of the police power comes for the first time and alone from the enactment of the Wilson bill, until the State passes a law thereafter forbidding such traffic, it has never exercised the power or the discretion, call it what you may, lodged in it by Congress. From this conclusion we see no logical escape.

"The operation and scope of criminal laws should not be enlarged by implication, but they should be strictly construed. And where there is any well founded doubt as to any act being a public offense, especially one not *malum in se*, it should not be declared such, but should rather be construed in favor of the liberty of the citizen. It follows that the petitioner is entitled to be discharged, and it is accordingly so ordered."

## PROHIBITORY LAW OF KANSAS WORKS TOTAL PROHIBITION AGAINST NON-RESIDENT OF STATE.

We were told upon the argument in the Circuit Court that the citizen of Missouri should not complain because under the Wilson bill he was prevented from selling his original packages in Kansas through the operation of the prohibitory law; because, it was said, if he wanted to sell liquor he should take out a permit and sell it for medical, scientific and mechanical purposes. The answer to this is, that the citizen of Missouri or any other State than the State of Kansas could not under the prohibitory law take out a permit in the State of Kansas to sell intoxicating liquors under the prohibitory law. The law governing the issuing of permits, while it does not in express terms require that the applicant shall be a resident of the State, yet, nevertheless, is so framed as to effectually exclude one not such resident. Sec. 2552, Vol. I, General Statutes 1889, of the State of Kansas, provides that—

"It shall be unlawful for any person or persons to sell or barter for medical, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors without first having procured a druggist's permit therefor from the probate judge of the county wherein such druggist *may be doing business at the time.*"

Here it is provided that the applicant must be doing business as a druggist in the county where he makes application for a permit at the time he makes such application; this, while not in terms requiring residence in the State, yet does so in substance, as it requires an established business *in the State* before the application can be made.

And said section proceeds as follows:

"And such probate judge is hereby authorized, in his discretion, to grant a druggist permit for the period of one year to any person of good moral character, *who is a registered pharmacist* under the law of this State, and lawfully and in good faith engaged in the business of a druggist in his county, and who in his judgment can be intrusted with the responsibility of selling said liquors for the purposes aforesaid, in the manner hereinafter provided; and said judge may at any time in his discretion revoke such permit. In order to obtain a druggist permit under this act, the applicant shall file in the office of the probate judge of the county *wherein he is doing business*, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and twenty-five reputable freeholders having the qualifications of electors, *and twenty-five reputable women* over twenty-one years of age, of the township, city of third class, or ward of any other city, *wherein such business is located*, setting forth: *First*, the city or township and particular place therein where such business is located, and that the applicant is a person of good moral character, and does not use intoxicating liquors as a beverage, and can be intrusted with the responsibility of selling the same; *second*, that said applicant is a pharmacist aforesaid, and is lawfully and in good faith *engaged personally* in the business of a druggist as the proprietor thereof *at the place* designated in the petition, and is well versed in his profession; *third*, that said applicant has, in his said business, exclusive of intoxicating liquors and fixtures, a stock of drugs, if in any city, of the value of at least one thousand dollars, and if elsewhere, of the value of at least five hundred dollars."

There are various other stringent requirements, such as advertisement of notice of application, bond, and proof of truth of petition, but the foregoing will suffice for the purpose.

It will be seen that the applicant must not only be a druggist and registered pharmacist, not only be personally engaged in the business in the county, but he must have been there in that business long enough that twenty-five

reputable freeholders shall know enough of his business to vouch for him in every particular. He must, moreover, be so much a fixture in the community that twenty-five reputable women over twenty-one years of age are so well acquainted with him as to be able to say that *he does not use intoxicating liquors as a beverage*, and that they know all the facts necessary to be stated in the petition. It is needless to say that a non-resident could never make the necessary application to obtain a permit, even if he was the most accomplished pharmacist in the United States.

The prohibitory statute of Kansas would therefore, if its provisions should be extended to original packages, have the effect to *totally prohibit* the traffic in intoxicating liquors within the State for any purpose or in any manner by any non-resident of the State, thus creating a most odious discrimination, even as viewed from the standpoint of the appellant.

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## CONGRESS CANNOT PROHIBIT COMMERCE AMONG THE STATES.

In the exercise of its power to regulate commerce, Congress cannot prohibit commerce among the States. Therefore, if even Congress had the power to surrender to the States its power over commerce, it could not empower them to go farther than Congress itself could go; it could not, therefore, under the guise of empowering them to regulate commerce, empower them to prohibit commerce, for the policy of the constitution is to foster and encourage commerce. The clause of the United States constitution con-

ferring power upon Congress to regulate commerce among the States was designed to prevent the States from prohibiting or placing upon inter-State commerce onerous burdens. The object was to insure free commerce among the States. It would be absurd, therefore, to say that Congress could confer upon the States power to do a thing which Congress itself could not do, and which it was the object of the framers of the constitution to forbid the States to do, and which it was supposed that the States and the States only might attempt; for the framers of the constitution never dreamed that Congress would ever be called upon to prohibit, restrict or abridge commerce among the States.

Nor is it any answer to this to urge that Congress may place restrictions upon or even prohibit commerce with foreign nations and with the Indian tribes; for in dealing with these subjects Congress exercises other powers than the mere power of regulating commerce. There may be grave reasons, growing out of our relations to a foreign nation or an Indian tribe, why Congress might put a restriction or embargo upon commerce, to say nothing of the settled practice of levying tariffs upon foreign goods for revenue and protection. But the powers thus exercised by Congress are not the mere power to regulate commerce. So also Congress, in the exercise of the power to provide for the general welfare of the United States *as a nation*, might in times of emergency exercise a degree of control over even inter-State commerce which it would not be warranted in doing in the mere exercise of its power to *regulate* commerce. But in times of peace, when the relations of all of the States to the Union and to each other are normal, I assert that Congress cannot, under its power

to regulate commerce among the States, destroy one of the chief objects of the Union.

Within the rule, therefore, of *Bowman v. Chicago &c. Rly. Co.*, and of *Leisy v. Hardin*, and within the principle enunciated in the constitution and never departed from by this court respecting inter-State commerce, I maintain that there is no ground upon which the Wilson bill can stand; and that, even if its constitutionality could be established and its provisions made effective, they could by no sort of interpretation be effectual to put in force within the States laws never passed by the States, and no legislation of the States existing at its passage could be made to reach sales of liquor made in original packages; and that, therefore, in any view of the case, the decision of the Circuit Court must be affirmed.

DAVID OVERMYER,
*Attorney for Appellee.*

IN THE

# Supreme Court of the United States.

**OCTOBER TERM, 1890.**

*No. 1529.*

JOHN M. WILKERSON, OF SHAWNEE COUNTY, KANSAS
APPELLANT,

*vs.*

CHARLES A. RAHRER, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

## Application of Liston McMillen for Leave to File Argument as a Friend of the Court.

Now comes Liston McMillen and asks leave of the Court to appear in this cause as a friend of the Court and file a printed argument, and in support of this application showeth to the Court as follows:

That he is a member of the bar of this Court, residing in Oskaloosa, Iowa, and is now the attorney for the defendants in ten injunction suits now pending in the circuit court of

the United States in and for the State of Iowa, central division, at the city of Des Moines.

That said causes were originally commenced in one of the State courts of Iowa to restrain the defendants from selling or keeping for sale intoxicating liquors in any manner whatever, and they have been transferred to the said United States circuit court in and for the State of Iowa, as aforesaid, upon the ground of the invalidity of the Iowa State prohibitory liquor laws, because they conflict with the Federal Constitution, laws, and public policies.

All the questions sought to be presented in these cases arise on the record in the case at bar, and hence the decision in this cause may materially affect the interests of the causes above mentioned.

The three principal propositions that applicant seeks to present, in addition to those already argued in the case at bar, are:

(1.) That the *Wilson bill* only purports to cure the *Leisey* case, and was not intended and does not purport to be a remedy for the *Bowman* case, and that Congress cannot revive a part of the State law. It must revive all or none. It is treating the State with *derision* to give it only a part of its system. It is not to be presumed that the State is content with such selections as Congress may see fit to make.

The Bowman case standing unaffected by congressional action, the right of the shipper to ship intoxicants into Iowa remains intact, and neither Congress nor the State can treat the shipper with *derision* and say, You may ship a commodity into a State, but you cannot sell it.

(2.) Under the *Wilson bill* and the *Bowman* case liquors can now be shipped from Illinois into Iowa, Kansas, or any other prohibitory State by express in fulfilment of orders sent by mail and prepaid by draft; and the liquor dealer in

Rock Island can, in fulfilment of such orders, drive his delivery wagon (loaded with intoxicants so ordered) across the bridge and deliver the same anywhere in Davenport.

By virtue of the 14th amendment to the Federal Constitution which secures to all the "*equal protection of the law*," a State ought not and cannot deprive its own residents of the right to do business upon its own soil, as those residing in other States can come into a prohibitory State and do. Hence the logic of the Bowman case when viewed in the light of the 14th amendment practically destroys the power of the State to prohibit the liquor traffic. The State may tax and regulate it, but its power to *outlaw* the traffic is gone.

(3.) Federal taxation of the liquor traffic imposes upon all three branches of the Federal Government, executive, legislative, and judicial, the correlative obligations to protect its tax-payers and vindicate its system of taxation and governmental support.

Taxation without protection is abhorrent to justice and contrary to the constitutional meaning of the word tax, looking, as we must and should do, to the Declaration of Independence and the early history of the Government for a definition of the idea of taxation in a free government.

The liquor traffic as a beverage pays about sixty million dollars into the Federal Treasury.

As long as this policy prevails in the Federal Government the Federal court, deriving as it does about twenty per cent. of its salary from this source, cannot treat these venders as criminal and their business as a nuisance without contaminating itself, for if in the eyes of any valid law this business is *carrion*, how can any Federal official claim he is not a carrion bird? Until, therefore, Congress shall repeal the liquor and tobacco tax the Federal court must hold that the Federal public policy forbids the outlawry of the liquor and tobacco dealer.

Having thus indicated the character of the argument that applicant desires to file, he respectfully petitions the Court to enter an order allowing such appearance and filing, to the end that the interests of his clients may be more fully protected.

Respectfully submitted,

LISTON MCMILLEN.

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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~412~~. ~~438~~ 14

THE INSURANCE COMPANY OF NORTH AMERICA, APPELLANT,

*vs.*

THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1886.

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a *Transcript of Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

THE HIBERNIA INSURANCE COMPANY, Appellees,
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA, Appellants. } No. 10647.

O. B. Sansum and Thomas Gilmore & Sons, Esqs., for appellees; Ernest Sabourin, Esq., for appellants.

Appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, A. D. 1886.

1 EASTERN DISTRICT OF LOUISIANA, *ss:*

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

To the Honorable Don A. Pardee, judge of the circuit court of the United States for the eastern district of Louisiana:

The Hibernia Insurance Company, of the city of New Orleans, complainants, exhibit this their bill of complaint against The Insurance Company of North America, defendants; and, complaining against the defendants, the complainants allege as follows, to wit:

That complainants are a corporation created and existing by the statutes of the State of Louisiana, and that the defendants are also a corporation created and existing by the statutes of the State of Pennsylvania.

That at the dates hereinafter stated the defendants carried on the business of insuring vessels, their freights and cargoes, against maritime risks; and, to secure to themselves a very large business and the complete control thereof, and of business of divers persons, owners of ships and cargoes, the defendants undertook and contracted to insure against the perils of the seas for said persons divers large sums of money on divers vessels and their freights and cargoes to and from divers ports and places on the face of the globe, and,

2 the said sums of money being very much larger than the sums of money usually insured by the defendants by any one vessel on any voyage, the defendants, to secure themselves indemnity against excessive losses, contracted with divers other insurance companies, whose names are now unknown to complainants, to reinsure for defendants the sums of money (so insured by defendants) that were or might be in excess of the sums usually insured by defendants; and, in pursuance thereof, on the 11th day of October, A. D. 1880, Charles Platt, Jr., of Philadelphia, for the defendants, applied to complainants to reinsure the defendants on the excess of

their usual lines (meaning any sum that might exceed the sum usually insured by the defendants on any good vessel on any voyage, which sum was fifty thousand dollars); and the said Charles Platt, for the defendants, represented to complainants that complainants were to reinsure for defendants only "those risks (meaning vessels and voyages) that the Insurance Company of North America carries their usual line on" (meaning that the risks which the complainants were to reinsure for defendants would be of such a character that defendants would never deem it necessary to reinsure any part of their said usual line of fifty thousand dollars on any vessel on any voyage); and complainants, upon the faith of said representations, made and delivered a certain policy of reinsurance to the said Charles Platt nominally, but really to the defendants, to reinsure them

3 only, not exceeding ten thousand dollars, against the perils of the seas, fires, and jettisons on all insurances that might be made by the defendants by all vessels, to attach only on the excess which the defendants might insure by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over fifty thousand dollars by any one vessel, and to attach *pro rata* with all other reinsurances that might be made for the defendants on the same excess from ports in the United States and from foreign ports to ports of discharge, excepting the port of New Orleans, from which port complainants took no risk exceeding five thousand dollars by any vessel, and to which port complainants took no risk whatsoever; that notices of all risks were to be sent to Messrs. Marshall J. Smith & Co., at New Orleans, and that said policy should continue and be in force until after twenty days' notice, given by either party to the other, to cancel it, but that the notice should affect no risk pending at the date of said notice; and afterwards, to wit, on the first day of July, A. D. 1883, by agreement of both parties, said policy was modified to limit complainants' liability under it to a sum not exceeding five thousand dollars, which policy is designated number 268, and is in the possession of the defendants.

That afterwards, on the 11th day of April, A. D. 1881, the

4 defendants applied to complainants for a separate policy to reinsure the defendants, not exceeding ten thousand dollars, on all insurances that might be made by the defendants on merchandise and specie from La Guayra, Porto Cabello, and Curacoa, to ports in the United States by all vessels sailing from said ports on and after the date last named, to apply (meaning to attach) only on the excess which the defendants might have (meaning which the defendants might insure) by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over sixty thousand dollars by any one vessel, and to apply (meaning to attach) *pro rata* with all other reinsurances that might be made for the defendants on the same excess; and complainants accepted said application and made and delivered to the defendants a certain other policy to reinsure them, as they had requested as aforesaid, against the perils of the seas, fires, and jettisons, designating it number 277, which policy is now in the possession of the defendants.

That afterwards, on the 9th day of November, A. D. 1881, the de-

fendants applied to complainants for another separate policy to reinsure the defendants, not exceeding ten thousand dollars, on all insurances that might be made by the defendants on merchandise from ports in the East Indies to ports in the United States by all vessels, to apply (meaning to attach) only on the excess which the defendants might have (meaning which the defendants might insure) by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over fifty thousand dollars by any one vessel, and to apply (meaning to attach) *pro rata* with all other reinsurances that might be made for the defendants on the same excess; and complainants accepted said application and made and delivered to the defendants a certain other policy to reinsure them, as they had requested as aforesaid, against the perils of the seas, fires, and jettisons, designating it number 296, which policy is now in the possession of the defendants.

That afterwards, on the 10th day of November, A. D. 1881, the defendants applied to complainants for another separate policy to reinsure the defendants, not exceeding ten thousand dollars, on all insurances that might be made by the defendants on merchandise from ports in the West India Islands to ports in the United States by all vessels, to apply (meaning to attach) only on the excess which the defendants might have (meaning which the defendants might insure) by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over fifty thousand dollars by any one vessel, and to apply (meaning to attach) *pro rata* with all reinsurances that might be made for the defendants on the same excess; and complainants accepted said application and made and delivered to the defendants a certain other policy to reinsure them, as they had requested as aforesaid, against the perils of seas, fires, and jettisons, designating it number 297, which policy was afterwards, on the 7th day of July, A. D. 1883, modified by the agreement of both parties to include ports in Demerara, and said policy is now in the possession of the defendants.

That afterwards, on the 26th day of August, A. D. 1882, the defendants applied to complainants for another separate policy to reinsure the defendants, not exceeding ten thousand dollars on all insurances that might be made by the defendants on cotton from ports in the United States to ports in Europe on all vessels, to apply (meaning to attach) only on the excess which the defendants might have (meaning which the defendants might insure) by all their policies on vessels, freight, cargo, or profits, including specie or treasure, over seventy thousand dollars by any one vessel, and to apply (meaning to attach) *pro rata* with all other reinsurances that might be made for the defendants on the same excess; and in that application the defendants stated that they might, in their discretion, reduce their line below the said sum of seventy thousand dollars; to which statement complainants replied that the defendants might reduce their said line of seventy thousand dollars on any vessel, provided complainants' line of ten thousand dollars were reduced in the same proportion; to which the defendants rejoined that such an arrangement would produce confusion; and the complainants

7 made and delivered to the defendants a certain policy to reinsure the defendants, not exceeding ten thousand dollars, on all insurances that might be made by defendants on cotton by all vessels from ports in the United States to ports in Europe, to apply (meaning to attach) only on the excess which the defendants might have (meaning which the defendants might insure) by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over seventy thousand dollars by any vessel, and to apply (meaning to attach) *pro rata* with all other reinsurances that might be made for the defendants on the same excess, said policy being designated by number 306, and is now in their custody and possession.

That afterwards, on the 1st day of July, A. D. 1883, by agreement between complainants and defendants, all said policies were modified to limit complainants' liability to a sum not exceeding five thousand dollars under any one policy.

That it hath always been and now is the custom, whereof the memory of man runneth not to the contrary, among merchants engaged in the business of making insurances and reinsurances to contract all reinsurances upon the faith that the reinsured procures reinsurance on the excess only of the usual line carried by the reinsured; that by the same custom the phrase "usual line"

8 means only that sum which the reinsured may be liable for over and beyond the sum usually insured, and by the same custom reinsurance is never effected to the full sum originally insured unless special reasons are disclosed for making it; and by the same custom such reasons are always deemed material to the risk, because they influence reinsurers either to demand a higher rate of premium or not to reinsure at all; and complainants charge that the said policies of reinsurance hereinbefore described and numbered, respectively, 268, 277, 296, and 306 were made and delivered as aforesaid subject to all of the usages and customs then and theretofore prevailing and existing among merchants, and that said policies were intended to attach and did attach only whenever the defendants insured for persons dealing with them either on vessel, freight, cargo, profits, specie or treasure, jointly or severally, a sum or sums over and above the said aforementioned sums of fifty thousand dollars and sixty thousand dollars and seventy thousand dollars, respectively, and that said several policies attached only *pro rata* with all other reinsurances made for the defendants on said excess only.

And complainants further charge that all knowledge and information respecting all risks that attached under any and all of said several policies of reinsurance and all knowledge and information respecting all losses and misfortunes that happened to the

9 things insured by the defendants and so reinsured by the complainants rested entirely with the defendants, because they had immediate information respecting said matters from the persons for whom the defendants insured as aforesaid, and complainants had no information or knowledge respecting any of the matters aforesaid excepting such information as the defendants themselves from time to time gave to complainants.

That from the date first aforesaid and until the 18th day of July, A. D. 1884, from time to time the defendants, by the said Charles Platt, have sent to complainants divers notices of divers risks which the defendants stated attached under said several policies of reinsurance, all of which complainants received in good faith, wholly relying upon the integrity and fair dealing of the defendants, and from time to time, during the same time, the defendants have sent to complainants divers demands for divers losses and charges which defendants alleged accrued against complainants and in favor of defendants under said several policies of reinsurance; and complainants, wholly relying upon defendants' statements and upon their integrity and fair dealing, paid the said demands in good faith (excepting several demands presented to complainants about the 18th day of July, A. D. 1884, amounting to about five hundred dollars), and that the sums of money so paid by com-
10 plainants to defendants amount to about the sum of eighty-three thousand dollars.

And complainants now further charge, upon information and belief, that a great many of the reports of said risks sent to complainants in said notices were false and untrue and were wholly outside of any and of all the terms of said contracts of reinsurance, and that a great many of the demands made by defendants upon complainants, and which were paid by complainants to defendants as aforesaid, were predicated upon said false and untrue statements, and all the payments made thereon by complainants to defendants were induced by said false and untrue statements and were made in error, and complainants are entitled to have and to receive and to recover the same back from defendants; and complainants charge, specially and particularly, upon information and belief as aforesaid, that the ship Obi being bound on a voyage in summer of the year A. D. 1881, from the Philippines, in the East Indies, to Boston, the defendants reported to complainants a reinsured risk of ten thousand dollars on said ship's cargo, and subsequently the defendants reported to complainants a loss of said cargo, amounting to the sum of three thousand five hundred and twenty-one dollars and thirty-seven cents, and demanded payment thereof, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now
11 informed and believe and charge that all the insurances made by defendants by that ship on that voyage never exceeded the sum of forty-five thousand dollars; that there was nothing by that ship on that voyage to which complainants' policy of reinsurance did or could attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further charge, specially, upon information and belief as aforesaid, that the brig Budstikken being bound on a voyage in the month of September, A. D. 1882, from Jamaica to Montreal, the defendants reported to complainants a reinsured risk of five thousand dollars on said brig's cargo, and subsequently the defendants reported to complainants a loss on said risk amounting to the sum of four thousand two hundred and eighty-eight dollars and forty-five

cents, and demanded payment thereof, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge that all the insurances made by defendants by that brig on that voyage never exceeded the sum of fifty thousand dollars, and that the defendants reinsured all the insurances which they had made by that brig on that voyage, and that there was nothing by that brig on that voyage to which
12 complainants' reinsurance policy could attach, and that the demand of the defendants and the claimants' payment thereof were made in error; and complainants further charge, specially, upon information and belief as aforesaid, that the bark "Etimologia" being bound on a voyage in the month of October, A. D. 1883, from Philadelphia to a port in Europe, the defendants reported to complainants a reinsured risk of five thousand dollars on said bark's cargo, and subsequently the defendants reported to complainants the loss of said bark and cargo and demanded of complainants payment of the said sum of five thousand dollars, and complainants paid the same in good faith, supposing it was a just and proper demand in favor of defendants; but complainants are now informed and believe and charge that all the insurances made by defendants by that bark on that voyage never exceeded the sum of fifty thousand dollars, or, if they did exceed that sum, the defendants reinsured all the insurances they had made by that bark on that voyage to below thirty-six thousand dollars, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that said demand of the defendants and the complainants' payment thereof were made in error; and complainants further specially charge, upon information and belief as aforesaid, that the bark Yorkshire being bound on a voyage in the month of June, A. D.
13 1882, from the Island of Barbadoes (it being one of the West India Islands) to Montreal, the defendants reported to complainants a reinsured risk of five thousand dollars on said bark's cargo, and subsequently the defendants reported to complainants the loss of said bark and cargo, and demanded of complainants payment of the said sum of five thousand dollars, and complainants paid in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge that all the insurances made by the defendants by that bark on that voyage never exceeded fifty-three thousand five hundred dollars, and that the defendants reinsured thirty-four thousand dollars thereof, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further specially charge, upon information and belief as aforesaid, that the bark Adele being bound on a voyage in the spring of the year, A. D. 1883, from the Island of Java to Montreal, the defendants reported to complainants a reinsured risk of five thousand dollars on said bark's cargo, and subsequently the defendants reported to complainants a general average loss on said

cargo, and demanded of complainants payment of the sum of sixteen hundred and ninety-two dollars and sixty-seven cents
14 as complainants' contribution to said general average loss, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge that the whole amount of insurances made by defendants by that bark on that voyage did not exceed ninety-one thousand seven hundred dollars, and that the defendants reinsured seventy-six thousand five hundred dollars thereof, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further charge, upon information and belief, that the steamship Avlona being bound on a voyage in the autumn of the year A. D. 1881, from a port in the Mediterranean to Montreal, the defendants reported to complainants a reinsured risk of five thousand dollars on said steamship's cargo, and subsequently the defendants reported to complainants a general and particular average loss on said ship's cargo, and demanded of complainants payment of the sum of five hundred and twenty-six dollars and thirty-five cents as complainants' contribution thereto, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge
15 that all the insurances made by the defendants by that steamship on that voyage did not exceed eighty thousand dollars, and that the defendants reinsured thirty-five thousand dollars thereof, and that there was nothing by that steamship on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further charge, on information and belief, that the bark Skerryvore being bound on a voyage in the month of January, A. D. 1883, from Havana to Boston, the defendants reported to complainants a reinsured risk of fourteen hundred and twenty-eight dollars on that bark's cargo, and subsequently the defendants reported to complainants a total loss of said cargo, and demanded of complainants payment of the sum last mentioned, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of the defendants; but complainants are now informed and believe and charge that all the insurances made by defendants never exceeded fifty-eight thousand six hundred dollars by that bark on that voyage, and that the defendants reinsured twenty-seven thousand dollars thereof, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of defendants and complainants'
16 payment thereof were made in error; and complainants further charge, on information and belief, that the bark Ocean being bound on a voyage from Trieste to New York in the month of January, A. D. 1883, the defendants reported to complainants a re-

insured risk of five thousand dollars on said bark's cargo, and subsequently the defendants reported to complainants a partial loss of said cargo, and demanded of complainants payment of the sum of six hundred and ninety-three dollars and forty-three cents as complainants' contribution thereto, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge that all the insurances made by defendants by that bark on that voyage never exceeded twenty-five thousand dollars, and that the defendants reinsured three thousand dollars thereof, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and the complainants' payment thereof were made in error; and complainants further charge, on information and belief, that the bark Impi being bound on a voyage in the month of August, A. D. 1882, from Philadelphia to a port in Europe, the defendants reported to complainants a reinsured risk of thirty-five hundred and sixty-three dollars on said bark's cargo, and subsequently the defendants reported to complainants a gen-
17 eral and particular average loss on said cargo, and demanded of complainants payment of the sum of four hundred and fifty-nine dollars and eleven cents as complainants' contribution thereto, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of defendants; but complainants are now informed and believe and charge that all the insurances made by the defendants by said bark on that voyage never exceeded forty-one thousand dollars, and that the defendants reinsured seven thousand dollars thereof, and that there was nothing by that bark on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further charge, on information and belief, that the steamship Peruvian being bound on a voyage in the month of November, A. D. 1882, from Montreal to Liverpool, the defendants reported to complainants a reinsured risk of five thousand dollars on said steamship's cargo, and subsequently the defendants reported to complainants a general average loss on said cargo, and demanded of complainants payment of the sum of three hundred and twenty-seven dollars and sixty cents as complainants' contribution thereto, and complainants paid the same in good faith, supposing it was a just and proper demand against complainants in favor of de-
18 fendants; but complainants are now informed and believe and charge that all the insurances made by the defendants by said steamship on that voyage never exceeded twenty-seven thousand dollars, and that there was nothing by that steamship on that voyage to which complainants' reinsurance policy could or did attach, and that the demand of the defendants and complainants' payment thereof were made in error; and complainants further charge, upon information and belief, that defendants have from time to time reported to complainants a great many other reinsurance risks upon which complainants have paid to defendants divers

claims and demands for special and general average losses, which were false and untrue and were never within the terms of any complainants' contracts of reinsurance with defendants, the particulars whereof complainants are not able to now state, because complainants are not informed specifically as to the insurances made by defendants on the risks lastly above referred to; and complainants further charge, on information and belief, that a great many risks to which complainants' several policies of reinsurance attached and to which complainants were and are entitled to be paid by defendants' usual premiums have never been reported to complainants, and complainants have received no credits from defendants for the premiums that have accrued thereon.

19 Complainants further show that the defendants are carrying on their said business at No. 64 Baronne St., in the city of New Orleans, in said district, by their agents, Marshall J. Smith & Co.; that said Marshall J. Smith is duly authorized by the defendants to accept service of process for the defendants in all suits commenced against the defendants in the State of Louisiana, and that the said Marshall J. Smith resides at and has his domicile at the southwest corner of Third street and Chestnut street, in the said city of New Orleans.

Complainants therefore pray that the defendants be compelled to produce and exhibit to the court here all orders which the defendants have received from all persons for whom they made said insurances, and all letters, documents, books, records, protests, and all other writings which contain any information or statement or in any manner pertain to, refer to, or concern the transactions and dealings which the complainants have had with the defendants in the premises aforesaid, and that an account may be taken of all reinsurances for which complainants became bound to defendants under said several contracts of reinsurance; that complainants be charged with — all, but only those risks, losses, charges, and damages that attached against complainants under said several contracts of reinsurance and all moneys paid by defendants to complain-

20 ants, and that complainants be credited with all premiums that accrued to them under said several contracts of reinsurance and all moneys paid by them to defendants, and that defendants be decreed to pay complainants such sums of money as complainants may be entitled to when it shall be ascertained, and that complainants may have such other and further relief as complainants may be entitled to in the premises and as the nature of their case may require and as shall be agreeable to equity and good conscience.

May it please your honor to grant to complainants the writ of subpœna, to be directed to the said Insurance Company of North America, commanding them, under a certain penalty therein to be inserted, to be and appear before the court here at a day to be named, and then and there to answer the premises (their answer under oath being hereby expressly waived) and, further, to stand to and abide

by such order, orders, and decree as shall be agreeable to equity and good conscience.

And complainants, as in duty bound, will ever pray.

T. GILMORE & SONS,
O. B. SANSUM,
*Complainants' Solicitors.*

Appearance of defendants entered Oct. 7, 1884.

HIBERNIA INSURANCE COMPANY
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

TUESDAY, *Oct. 7th*, 1884.

The defendants herein, by their solicitor, E. Sabourin, *has* this day entered their appearance to the complainants' bill of complaint.

21 *Answer. Filed Nov.* 15, 1884.

THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

The answer of The Insurance Company of North America, defendants, to the bill of complaint of The Hibernia Insurance Company of New Orleans.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say—

That they admit that at the dates stated in the bill of complaint they did carry on, as they yet do, the business of insuring vessels, their freights, and cargoes against maritime risks; but these defendants deny absolutely that they undertook at any special time and with any definite view, and especially in so far as their business connections with complainants were ever intended or were or are concerned, to contract to insure large sums for the purposes mentioned in the bill, to wit, of "securing for themselves a very large business and the complete control thereof," and they especially
22 deny the allegations of complainants that the sums of money so insured "were very much larger than the sums of money usually insured by defendants on any one vessel on any voyage," and that in consequence thereof and to secure indemnity against unusual excessive loss, as falsely intimated by that bill, defendants contracted with other insurance companies for reinsurance on the sums "that were or might be in excess of the sums usually insured by defendants;" and these defendants do aver and the truth is that long before they had any dealings with or even knew of the exist-

ence of the complainants they, on account of the very large and extensive business attracted to them by their well-known standing and financial position, have always taken all proper risks to very large amounts, as their customers may have applied or may now apply for, these defendants, for the purpose of protecting themselves against excessive loss on any one risk, procuring for themselves such reinsurance as they might deem necessary and proper over and above the line which they choose to carry, which line necessarily varied in amount according to the vessel, the nature of the cargo, of the voyage, the season, &c.

These defendants also deny that, "in pursuance thereof" (meaning in pursuance of such previous allegations or intimations as falsely made by the complainants in their bill), they applied to complainants, through Charles Platt, Jr., of Philadelphia, on October 11th, 1880, "to reinsure them (the defendants) on the excess of their usual lines," "which sum was fifty thousand dollars." Defendants deny that they ever made, either directly or indirectly, or through Charles Platt, Jr., in the manner described
23 or any other manner, the appication for reinsurance described or in any other manner the application for reinsurance alleged by complainants as bearing date on October 11th, 1880, or that any such policy as described in the bill was issued to them or for them, or that said alleged contract was in any sense in its terms a contract for reinsurance, or that these defendants had anything to do with the same; and defendants absolutely deny that their usual lines of insurance or the usual sums insured and carried by them as their own risk was ever or is now, as falsely alleged by complainants, the sum of fifty thousand dollars, the lines of risk usually retained by these defendants varying, on the contrary, very greatly, as herein above set forth, as with all good insurance companies, according to the vessel, the season, the cargo, the voyage, &c.; and they also deny that Charles Platt, Jr., was authorized by these defendants, if ever he did, as alleged (a fact unknown to these defendants and neither admitted nor denied), "represent to complainants that complainants were to reinsure for defendants only 'those risks (meaning vessels and voyages) that the Insurance Company of North America carries their usual line on,'" which said herein double-leaded words set forth in the bill within quotation marks are not contained nor is anything similar to the same contained in the said pretended policy of reinsurance of October 11th, 1880, alleged by complainants; and defendants deny totally the assumption of complainants in their bill that these defendants would never reinsure any part of what complainants falsely term defendants' usual line of fifty thousand dollars, there being no such words nor intent manifested or deducible from the context thereof in the alleged policy of October, 1880; and these defendants deny that any
24 such policy of reinsurance as alleged in the bill was ever issued by complainants to defendants, or for them, or with their authority, knowledge, or consent, or for their account, or that said alleged policy was *ever*, in fact, ever issued to or for them in any manner, these defendants neither admitting nor denying the

alleged representations of Charles Platt, Jr., of which they know nothing; but they deny that the alleged contract issued to the said Charles Platt, Jr., is a contract of reinsurance, as erroneously stated by the bill, said contract being on its face and in its very clear wording a mere contract of insurance with Charles Platt, Jr., nor does said alleged policy of reinsurance contain in any manner, either directly or by inference, the allegations of the bill that it was to attach only on the excess which the defendants might insure by all their policies on vessel, freight, cargo, or profits, including specie or treasure, over fifty thousand dollars by anyone vessel; nor is the name of the defendants in any manner mentioned in said alleged contract of reinsurance; nor had defendants anything to do with the fact that notices of risks were to be sent to Marshall J. Smith & Co., of New Orleans, nor with all or any of the other alleged clauses of said alleged contract; nor with the alleged modification of complainants' liability thereunder by the alleged agreement of July, 1883, said alleged policy of reinsurance No. 268 not concerning in any manner these defendants, who, in addition to their previous special denials, deny that the said policy No. 268 is now or has ever been in the possession or control of said defendants or that they have ever had any interest therein.

25 And these defendants aver that they have seen and read said alleged policy No. 268, issued to Charles Platt, Jr., which contains no allusion to nor mention of these defendants, and is in no sense, either in its wording or otherwise, a contract of reinsurance with these defendants, as falsely alleged, but a mere contract of insurance with the said Charles Platt, Jr., under which applications for reinsurance by defendants were from time to time transmitted to complainants and accepted by them, no objection being ever made by complainants to any of the risks and the premiums being duly paid to and received by them, all of said risks being known and understood as "special risks," without reference to the lines carried by the defendants. These defendants admit the issue to them, on the dates stated in the bill and under Nos. 277, 296, 297, and 306, of contract policies by complainants to reinsure them, as by the terms thereof correctly stated in the bill, on the risks from La Guayra, Porto Cabello, and Curacoa to ports in the United States, and from ports in the East Indies to ports in the United States, and from ports in the West India Islands to ports in the United States, and on cotton from ports in the United States to ports in Europe, and that said original four contract policies are now in — possession and the same will be produced when required; but they deny the truth of the statement of conversation or correspondence, in so far as they know or are informed, alleged to have taken place between complainants and defendants in the latter's application for policy No. 306, the terms of said policy being the full extent and limit of the rights and liabilities of each party thereto; and these defend-

26 ants allege that they have always claimed and exercised, without contest, as properly belonging to any insurance company, the right of reducing the line of their risks to such figures as they

at any time might deem proper, and that such is the custom prevailing with marine underwriters.

And these defendants admit that on July 1st, 1883, by agreement with complainants, the liability of the latter was limited to five thousand dollars on any one of said four here above policies, numbered, respectively, 277, 296, 297, and 306, but they deny that they had anything to do or had any *concern* with any modification of policy No. 268, alleged in the bill. And these defendants deny the allegations of complainants' bill that it always has been and is now the custom among merchants and underwriters to contract all reinsurances on the faith that the reinsured procures reinsurance on the excess only of the "usual line" carried by the reinsured, and deny that the words "usual line" mean only that sum which the reinsured may be liable for over and beyond the sum usually insured, and that reinsurance is never effected to the full sum originally insured unless for special reasons disclosed, and that such reasons are always deemed material to the risk; and, whilst admitting that policies Nos. 277, 290, and 306 attached only on amounts exceeding, respectively, the sums of fifty thousand, sixty thousand, and seventy thousand dollars, in accordance with the terms and conditions expressed in said policies, they deny that the terms and conditions of policy No. 268 were in any manner similar to those of the other above-mentioned policies, and that said policy No. 268 was limited in any manner to any excess of insurance whatsoever, and that the same was issued to or for them in any manner; and defendants aver, and the truth is, that they have strictly complied with the terms and meaning of all and every of the policies aforementioned, including policy No. 268, which was neither made to nor for them; that each and every risk sent by them to complainants, as well as every loss incurred by them, were in strict accordance with good faith and the contracts existing between complainants and themselves, and that all their dealings for reinsurance with said complainants have ever and always been carried on with the good faith, integrity, and fair dealing upon which insurance companies always rely in matters of reinsurance.

27

And these defendants aver that all the knowledge and information as to risks under policies of reinsurance and as to all losses and misfortunes thereunder which were in their possession and which it is usual, proper, or necessary to convey to reinsure were so conveyed and given in due course to complainants in all the matters in which they were interested or concerned, and that no objections were ever made by them, said complainants receiving and keeping with great equanimity and without demurrer the usual premiums for reinsurance as they accrued and were paid to them by defendants. These defendants admit that the notices of divers risks were sent to complainants at various times, not only through Charles Platt, Jr., as stated, but also through others; but they deny that they stated under which policy said risks attached, the terms and conditions and extent and purposes of each policy being sufficiently explicit in the wording thereof. They admit that

28 complainants received the same relying on the integrity and fair dealing of defendants, and that said complainants, likewise relying on these defendants' statements, received from them demands for losses and charges and paid the same, excepting for some five hundred dollars, the total amount for losses and charges so paid by complainants, and stated by them to be about eighty-three thousand dollars, being neither admitted nor denied, the exact sum not having yet been computed by defendants; but these defendants aver that such reliance of complainants on their integrity and fair dealing was well founded and deserved by defendants, who have ever so demeaned themselves in all their other business relations with complainants, as well as with all others, as not to demerit their universally acknowledged standing and good reputation. And these defendants deny that either a great many or any reports of risks sent by them to complainants was or were false and untrue and was or were outside of all or any of the terms of the alleged contracts of reinsurance, as falsely and maliciously and without the slightest foundation for their alleged information and belief stated by complainants in their bill; and they deny that a great many or any of their demands for loss made upon complainants and paid by the latter were predicated upon false and untre statements, as again falsely and maliciously and without the slightest foundation alleged by complainants in their bill, and they equally deny that all or any of the payments made by the complainants to defendants were induced by false and untrue statements or made in error, or that complainants are entitled to recover the same; but, on the con-

29 trary, these defendants aver that all reports of risks, statements of amounts insured, and of losses incurred and adjustments made were in each and every instance fair, true, and correct.

And these defendants, now making answer *seriatim* to the special and particular charges (ten in number) made against them by complainants in their bill upon pretended and alleged information and belief, in error, or on false or untrue statements were ever demanded of or made by complainants to them in the said respective ten cases specially cited, and specially make answer in each of said cases as follows:

1st. Ship "Obi," from the Philippines, in the East Indies, to Boston; cargo of sugar.

These defendants admit the total amount insured by them on said ship did not exceed forty-five thousand dollars ($45,000), it being, in truth, forty-four thousand nine hundred and ninety-nine dollars ($44,999), but they deny that they reported to complainants a reinsured risk of ten thousand dollars ($10,000) on their East India or any other contract policy of reinsurance, the same not covering this case; but they aver, and the truth is, that, not desiring to carry on this ship so large a line as forty-four thousand nine hundred and ninety-nine dollars ($44,999), a special application to the complainants for reinsurance in the sum of ten thousand dollars ($10,000) was made for them through their agents, Forster & Scull, of Boston, as will appear by the order, to be produced when required,

so that their reserved line should be about thirty thousand dollars ($30,000), the actual amount carried at the risk of these defendants being finally found to be twenty-seven thousand four
30 hundred and ninety-nine dollars ($27,499); and defendants aver that this was a special reinsurance, not coming under the provisions of any open contract policy entered into by them with complainants, and that, damage having occurred, a claim was justly made by them upon complainants in accordance with the terms of their policy.

2nd. Brig "Budstikken," from Jamaica, West Indies, to Montreal, Canada; sugar as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of the brig, and they aver that they neither did or could do so, as the voyage was not covered by any of their contract policies with complainants, and they admit the fact alleged by complainant that the total amount of their insurance did not exceed fifty thousand dollars ($50,000); but defendants aver, and the truth is, that the probable amount to be insured by these defendants on said ship was reported to them under the open policy of Messrs. Gillespie & Moffatt as being about thirty-five thousand dollars ($35,000), as per original order herewith exhibited; whereupon these defendants, not willing to carry over their usual line to Montreal, which was about fifteen thousand dollars ($15,000), applied for reinsurance to sundry companies and, amongst others, for special reinsurance to complainants, the latter accepting this risk for five thousand dollars ($5,000); and defendants aver, and the truth is, that when the actual amount on board was reported it was found to be only nineteen thousand three hundred and nine dollars
31 ($19,309), leaving, therefore, no line for defendants to carry, the vessel, being subsequently wrecked, the whole loss necessarily fell on the reinsurers, and this was merely accidental and arising from the mistaken information given them at first by the assured, the true intention and desire of these defendants having been to carry for themselves, as their line, the fifteen thousand dollars ($15,000) above alluded to.

3rd. Bark "Etimologia," from Philadelphia, U. S. A., to Europe; cargo of grain.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of this bark, and they aver that they neither did nor could do so, as the voyage was not covered by any of their contract policies with the complainants, though they admit the fact alleged by complainants that the total amount of their insurance did not exceed fifty thousand dollars ($50,000); but defendants aver, and the truth is, that they made application to the various companies for reinsurance, and amongst them a special application to complainants for reinsurance for five thousand dollars ($5,000), which was accepted, defendants retaining for themselves thirty-five thousand five hundred dollars ($35,500), which was about the sum

usually retained by them on cargoes of this nature, and that said bark and cargo being subsequently lost, claim was justly made by these defendants for the amount of their policy; and the defendants aver that some salvage money has since been received by them, and that the proportion thereof due to complainants has been duly credited to them on their account with these defendants.

32 4th. Bark Yorkshire, from Barbadoes, West Indies, to Montreal, Canada; sugar as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of this bark, the voyage not being covered by any of their contract policies with complainants, and they aver, and the truth is, that special application for reinsurance was made to the complainants for five thousand dollars ($5,000) and accepted, the sum retained by them at their own risk being fourteen thousand four hundred and seventeen dollars ($14,417), or about their usual line for the dangerous navigation of the St. Lawrence, and subsequently, the vessel being lost, claim was made on complainants for the amount of their policy, the demand being just and proper.

5th. Bark "Adele," from the island of Java, East Indies, to Montreal, Canada; sugar as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of this bark, the voyage not being covered by any of their contract policies with complainants; but they aver, and the truth is, that, anticipating a large amount at risk on said vessel, the probable amount reported to them by the assured being about one hundred and fourteen thousand dollars ($114,000), as will — shown by the original order, which will be produced when required, they procured through their several agents as

33 much reinsurance as they could, amongst which was reinsurance with complainants, by special application to and accepted by them, to the extent of five thousand dollars ($5,000), the whole amount of reinsurance so procured by them *flat* in several companies, including complainants, being altogether sixty-one thousand five hundred dollars ($61,500), which left defendants, as they supposed, a line of fifty-two thousand five hundred dollars ($52,500); that vessel, having sailed from her port of lading, Batavia, and whilst on her way to the second port of loading, was stranded and incurred heavy expenses for salvage, &c.; that the amount actually taken on board at Batavia proved to be forty-seven thousand three hundred and nine-two dollars ($47,392), and there being at the time more reinsurance than the amount on board at the date of the disaster, the loss then incurred necessarily and justly fell on the reinsurers and divided amongst —, and claim made on the reinsuring companies for their proportion, the loss being twenty thousand eight hundred and nineteen dollars and eighty cents ($20,819.80) on general average; that after repairing said vessel was laden at her next port with the remainder of her cargo, and sailed for her destination, Montreal, the whole amount of insurance

covered by these defendants at that time, until the port of destination was reached, being finally ninety-one thousand six hundred and forty-four dollars ($91,644), of which sixty-one thousand five hundred dollars ($61,500) were reinsured, leaving the line retained by defendants at their own risk on such voyage thirty thousand one hundred and forty-four dollars ($30,144), which amount it had been and was their intention to have continually carried at
34 risk during the whole voyage from Batavia, the fact of loss between the two ports before the whole cargo was on board not being by any possibility known to nor foreseen by defendants and being due to accident only.

6th. Steamship "Avlona," from the Mediterranean to Montreal; merchandise as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of this vessel, the voyage not being covered by any of their contract policies with complainants; but they aver, and the truth is, that special application for reinsurance was made to complainants for five thousand dollars ($5,000) and accepted, the sum retained and carried by them at their own risk being forty-two thousand three hundred and nineteen dollars ($42,319), and that subsequently, loss and damage occurring, claim was made on complainants for their proportion of the same, the demand being just and proper.

7th. Bark "Skerryvore," from Havana to Boston; sugar as cargo.

These defendants admit that they reported to complainants, under their contracts with them, a reinsured risk of one thousand four hundred and twenty-eight dollars ($1,428) on the cargo of this vessel on the excess of fifty thousand dollars ($50,000) insured by defendants; but they aver that said amount of reinsurance was the just and true proportion applying under the contract policy attaching on the excess of fifty thousand dollars ($50,000) *pro rata* with other reinsurance, the total amount originally insured by defend-
ants being fifty-eight thousand five hundred and sixty-nine
35 dollars ($58,569), eight thousand five hundred and sixty-nine dollars ($8,569) of which, being in excess of fifty thousand dollars ($50,000), were reinsured and distributed under their contract policies, the share thereof of the complainants being, as stated, one thousand four hundred and twenty-eight dollars ($1,428) and twenty thousand dollars ($20,000) of the remaining fifty thousand — ($50,000) being reinsured flat by the defendants, thus retaining as their own line of risk thirty thousand dollars ($30,000); and defendants claim that their action in this matter was equitable and proper, and that they had and always exercised the right of reinsuring at their convenience such amounts as they deem necessary and proper.

8th. Bark "Ocean," from Trieste to New York; merchandise as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dol-

lars ($5,000) on the cargo of this vessel, the voyage not being covered by any of their contract policies with complainants; but they aver and the truth is that special application for reinsurance was made to complainants for five thousand dollars ($5,000) and accepted, and that, a partial loss subsequently occurring, claim was made on complainants for the amount due, the demand being just and proper.

9th. Bark "Impi," from Philadelphia to a port in Europe; grain as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of three thousand
36 five hundred and sixty-three dollars ($3,563) on the cargo of this vessel, the voyage not being covered by any of their contract policies with complainants; but they aver and the truth is that they applied for a special reinsurance of five thousand dollars ($5,000) on an access of thirty thousand dollars ($30,000), which was filled in for three thousand five hundred and sixty-three dollars ($3,563) on the completion of line, which special application was accepted by complainants, the amount carried by defendants at their own risk being thirty thousand dollars ($30,000), and that subsequently, upon loss occurring, a claim of four hundred and fifty-nine dollars and eleven cents ($459.11) was made on complainants for the amount due, the demand being just and proper.

10th. Steamer "Peruvian," from Montreal to Liverpool; merchandise as cargo.

These defendants deny that they reported to complainants, under their contracts with them, any reinsured risk of five thousand dollars ($5,000) on the cargo of this vessel, the voyage not being covered by any of their contract policies with complainants; but they aver and the truth is that, not intending to carry by this vessel more than the line usually carried from Montreal, they applied to complainants for a special reinsurance of five thousand dollars ($5,000), which was accepted, and that subsequently, a loss occurring, they claimed justly and properly, and collected from complainants three hundred and twenty-seven dollars and sixty cents ($327.60) on a general average loss.

And these defendants, further answering the charges made against them in the bill on pretended information and belief, deny
37 that they have reported at any time or in any manner to complainants "a great many other reinsurance risks upon which complainants have paid to defendants divers claims and demands for special and general average losses which were false and untrue and which were never within the terms of complainants' contracts of reinsurance with defendants," as falsely, maliciously, wantonly, and without cause charged by complainants in their bill against defendants; but, on the contrary, these defendants aver and the truth is that at all times and in every instance they have made fair and true and correct reports to complainants of all the reinsurance risks and of all the losses thereunder attaching, all of which will prove with all necessary particulars when required; and these

defendants, further answering the last and final charge made against them in the bill on pretended information and belief, deny "that a great many risks to which complainants' several policies of reinsurance attached and to which complainants were and are entitled to be paid by defendants usual premiums have never been reported to complainants, and complainants have received no credits from defendants for the premiums that have accrued thereon," as falsely, maliciously, wantonly, and without cause charged by complainants in their bill against defendants; but, on the contrary, these defendants aver and the truth is that they have always correctly and truly reported to complainants all and any risks to which complainants' several policies of reinsurance attached and on which the usual premiums were due, and they also aver that they have paid to complainants or given them credit for the premiums accrued on
38 said risks whenever said premiums were or became due.

And these defendants aver that, this being a suit for accounting, they desire to end at once all their outstanding matters with complainants, and they therefore aver and charge that a sum of two hundred and nine dollars and sixty-five cents ($209.65) is yet due and owing to them by complainants on their various transactions, which are fully set forth in their annexed bill, by which they refer, and that, the same having been often demanded by them of complainants, payment thereof has up to this day been refused; that the same is justly due to these defendants, and that they now claim judgment in their favor for said amount on the final decree to be rendered herein.

And these defendants respectfully declare their readiness and willingness at all times to produce and exhibit before this honorable court when required all orders, letters, documents, books, records, protests, and all other writings containing any information or statement referring to the transactions of reinsurance mentioned in the bill of complaint, as well as to give every information in their power concerning the matters mentioned and properly within the scope of the bill in so far as they have the same within their possession or control or in any manner accessible to them, but they humbly submit that as to their books duly verified extracts from the same be received by the court, and as to papers and documents, which are matters of record with them in their very extensive business, that authentic copies thereof be received, excepting in such cases where for reasons specially set forth by complainants and shown to
39 and approved by this honorable court an inspection by the court itself of such papers or documents may be deemed necessary, it being the earnest desire and intention of the defendants to give to this honorable court all the means within their reach, power, or control by which they expect to show the rectitude of their conduct and the injustice and foulness of the assault made against their fair name.

And defendants now aver that they have been established as a corporation and have carried on their business of insurance since nearly a century, having first established in public assembly in the

city of Philadelphia, the principal seat of their business, as far back as 1792; that under prudent and wise management and through constant good faith and honesty in their dealings they have grown in the confidence of the people not only in America but in Europe until their business has become of great magnitude and importance and their available assets have reached the sum of nine millions of dollars ($9,000,000); that in all their transactions with their customers and other insurance corporations they have always been fair and ready and willing to do justice and prompt in correcting errors when shown, their own good name and well-earned reputation being of paramount importance and solicitude to them; that not only have they been wantonly, wickedly, maliciously without the slightest foundation or probable cause charged by complainants with gross fraud in their dealings with them, but complainants have, either by themselves or they contributing thereto or conniving therewith or allowing the same to be done, endeavored to injure and destroy the fair name and remunerative business of defendants through
40 the publications in the newspapers of this country of the false charges and accusations of said complainants against these defendants and for the reasons aforesaid; and these defendants respectfully reserve their right to claim, as and when they may be advised, damages, both real and vindictive, against said complainants; and these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer thereto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained; and they moreover pray for a decree in their favor against said complainant for the sum of two hundred and nine dollars and sixty-five cents ($209.65), balance due them on settlement of account up to this day.

INSURANCE COMPANY OF NORTH AMERICA,
Per CHARLES PLATT, *Pres't.*
[SEAL.] CHARLES PLATT, *President.*

E. SABOURIN, *Of Counsel.*

Attest: GRIEVILLE E. FRYER, *Sec'y.*

41 UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania:*

Charles Platt, president of the Insurance Company of North America, being duly sworn, says that all and singular the allega-

tions contained in the foregoing answer are true, save those based upon information received and stated in said answer, and that said allegation, upon information received, he has good reason and verily believes to be true.

CHARLES PLATT.

Sworn and subscribed before me this 11th day of November, A. D. 1884.

CHARLES GIBBONS, JR.,
*United States Commissioner, 3d Judicial Circuit.*

4 exhibits, policies of insurance, filed with answer November 22nd, 1884; copied at pages 220, 221, 222, 223 of this transcript.

42 & 43 EXHIBIT A.

U. S. C.

"EXHIBIT A." Filed with

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 44 | 1880. | | | |
| 268— 1 | Oct. 13 | S. S. Nerissa | Phila | Rotterdam |
| " 2 | " 15 | Ship B. D. Metcalf | New York | Trieste |
| " 3 | " " | Bk. Joseph Clark | Balto | Antwerp |
| " 4 | " 16 | Ship Dora | " | do |
| " 5 | " 18 | Br. ship Shelbourne | Phila | Dublin |
| " 6 | " 22 | " bk. Areola | Balto | Antwerp |
| " 7 | " " | It. " Beppino Accame | do. | Havre |
| " 8 | " 26 | S. S. Rossini | do. | Antwerp |
| " 9 | " " | Br. bk. A. Gondy | do. | C. F., f. o. |
| " 10 | " 28 | " " Buteshire | do. | Antwerp |
| " 11 | " 29 | Ship Nuncio | Philada. | do. |
| 268— 12 | Nov. 4-5 | Br. bk. Marquis of Lorne | Balto. | Havre |
| " 13 | " 8 | S. S. Barcelona | Cadiz | Montreal |
| " 14 | " 11 | Br. bk. Carrier Dove | Balto. | Cork |
| " 15 | " " | Ship Antoinette | Phila. | Waterford |
| " 16 | " 15 | Br. bk. Nicosia | do. | do. |
| " 17 | " 18 | " ship City Camp | Balto | Belfast |
| 46 | 1880. | | | |
| 268— 18 | Nov. 19 | 3-M. schr. Peter H. Crowell | Boston | Philada. |
| " 19 | " " | Br. bk. Mary Lawton | Philada. | Cork |
| " 20 | " 26 | " Northern Star | Rio | Balto. |
| " 21 | " 29 | Ship Sapphire | Philada | Hull |
| " 22 | " " | Br. bk. Hannah Blanchard | do. | Antwerp |
| 268— 23 | Dec. 1 | S. S. Golden Horn | Middlesboro, E. | Philada |
| " 24 | " " | Br. bk. Muriel | New Orleans | Cork, f. o. to U. K., &c. |
| " 25 | " " | Herbert | Galveston | L'pool |
| " 26 | " " | Br. ship Thierra | N. York | do. |
| " 27 | " " | " bk. Anna | Alexandria, Va. | U. K., &c. |
| " 28 | " " | " " Bel Stewart | Balto. | do. |
| " 29 | " " | " " Albuera | do. | do |
| " 30 | " 2 | " " Kate Burrill | do. | Belfast |
| " 31 | " 3 | Schr. John B. Adams | Philada. | St. Malo |
| " 32 | " 6 | Bk. Mary G. Reed | West coast of S. America. | United States |
| " 33 | " 7 | Rus. bk. Matts August | Balto. | U. K., &c. |
| " 34 | " 8 | " ship Altai | do. | St. Nazaire |
| 48 | 1880. | | | |
| 268— 35 | Dec. 11 | Br. bk. Norwood | Balto. | Havre |
| " 36 | " " | " Messina | Havana | Philada |
| " 37 | " 14 | Bk. Sarah Douglass | Galveston | L'pool |
| " 38 | " 17 | S. S. Glenath | Boston | London |
| " 39 | " 28 | Rus. bk. Lennertin | Philada. | Lorient |
| " 40 | " 29 | S. S. Irthington | Balto. | L'pool |
| " 41 | " " | Bk. Thomas Perry | N. York | London |
| | 1881. | | | |
| 268— 42 | Jan'y 4 | Bk. Inveresk | Galveston | L'pool |
| " 43 | " 5 | Ship Guardian | Manilla | N. York |
| " 44 | " 7 | Br. ship N. B. Lewis | Philada. | Havre. |
| " 45 | " " | Rus. bk. Usko | Balto. | Queenstown f. o. |
| " 46 | " " | Nor. ship Livingston | Philada. | U. K. or Cont. |
| " 47 | " 8 | S. S. Highbury | do. | Antwerp |
| " 48 | " 12 | Nor. ship Lina | Balto. | Rotterdam |
| " 49 | " 15 | Bk. Adelia Carleton | Galveston | Philada, priv. New Castle, Del. |
| " 50 | " 17 | Ship Jorawur | N. York | L'pool |

E. S. H. 18, 21, '84.

C. 10647.

Answer November 29th, 1884.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| 45 | Wheat, f. p. a. E. C. | 10,000 | | 1¼ | 100 | |
| | Refined petroleum | 5,000 | | 1½ | 75 | |
| | do. | 10,630 | | 1¾ | 140 | |
| | Wheat, f. p. a. E. C. | 9,000 | | 3 | 202 50 | |
| | Wheat & corn, subject to 20% average | 10,000 | | 3½ | 280 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 3½ | 243 75 | |
| | do. do. | 6,000 | | 2¾ | 123 75 | |
| | do. do. | 3,766 | | 1¾ | 49 42 | |
| | do. do. | 7,000 | | 3¼ | 170 62 | |
| | do. do. | 9,350 | | " | 227 90 | |
| | do. do. | 10,000 | | 3½ | 280 | |
| | | | | | 1,892 94 | |
| | Wheat, f. p. a. E. C. | 8,000 | | 3½ | 202 50 | |
| | Cargo | 7,500 | | 1¾ | 98 44 | |
| | Wheat, f. p. a. E. C. | 8,864 | | 3½ | 224 38 | |
| | do. | 10,000 | | 3½ | 280 | |
| | do. | 10,000 | | " | 280 | |
| | do. | 8,913 | | " | 233 96 | |
| | Forward | | | | 1,319 28 | |
| 47 | Amounts brought forward | | | | 1,319 28 | |
| | Sugar | 9,833 | | ⅝ | 46 10 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 3½ | 280 | |
| | Mdse., ¼% to ret.; no loss cl'd. | 5,000 | | 2 | 75 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 3½ | 262 50 | |
| | do. | 5,000 | | " | 131 25 | |
| | | | | | 2,114 13 | |
| | Steel blooms | 4,450 | | 2 | 71 20 | |
| | Wheat | 10,000 | | 4¼ | 318 75 | |
| | Freight, valued @ $22,000 | 5,000 | | 2 | 75 | |
| | Corn, f. p. a. E. C. | 5,000 | | 3½ | 131 25 | |
| | Wheat, do. | 5,000 | | " | 131 25 | |
| | do. do. | 5,000 | | 3½ | 121 88 | |
| | do. do. | 5,000 | | 3½ | 131 25 | |
| | do. do. (under 20%) | 5,000 | | 4 | 150 | |
| | do. do. | 7,500 | | 3 | 180 | |
| | Nitrate of soda (10% av.) | 7,600 | | " | 171 | |
| | Wheat, f. p. a. E. C. | 2,625 | | " | 59 06 | |
| | do. | 9,525 | | 3⅛ | 223 25 | |
| | Forward | | | | 1,763 89 | |
| 49 | Amounts brought forward | | | | 1,763 89 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 3¾ | 281 25 | |
| | Sugar | 5,000 | | 1 | 37 50 | |
| | Cotton | 5,000 | | 1½ | 56 25 | |
| | Grain | 5,000 | | 1 | 37 50 | |
| | Wheat, f. p. a. E. C. | 5,000 | | 3¼ | 130 | |
| | Grain, gen'l cargo | 10,000 | | 1 | 37 50 | |
| | Oil | 4,500 | | 1½ | 50 62 | |
| | | | | | 2,394 51 | |
| | Cotton | 8,000 | | 1½ | 90 00 | |
| | Md-e | 8,000 | | 2¾ | 165 | |
| | Wheat, f. p. a., &c. | 5,000 | | 3¾ | 150 | |
| | do. | 5,000 | | 3¼ | 121 88 | |
| | do. | 5,000 | | 3½ | 140 | |
| | do. | 10,000 | | 2 | 160 | |
| | do. | 7,500 | | 3¼ | 182 81 | |
| | Cotton | 10,000 | | 1⅛ | 90 | |
| | do. | 5,000 | | 1⅝ | 60 94 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 268— 51 | Jan'y 17 | S. S. Castilla | Mobile via Havana | Barcelona |
| " 52 | " 18 | " City of Bristol | N. York | L'pool |
| 50 | | | | |
| | 1881. | | | |
| 268— 53 | Jan'y 20 | Ship Semiramis | Balto | Antwerp |
| " 54 | " 25 | Bk. Herrick Ibsen | N. York | do |
| " 55 | " 26 | Bg. Jeremiah | Cardenas | Philada |
| " 56 | " " | S. S. James Gray | Philada | Antwerp |
| " 57 | " 31 | Bg. Matava | Matanzas | Wilmington, N. C. |
| " 58 | " " | Ship Cashier | Philada | Bordeaux |
| 268— 59 | Feb'y 3 | S. S. Whitburn | Philada | Genoa |
| " 60 | " 4 | Ship Peacemaker | N. Orls | Havre. |
| " 61 | " 5 | " Newman Hall | Galveston | L'pool |
| " 62 | " 12 | " Prince Arthur | Bahia | Halifax |
| " 63 | " " | Bk. Governor | Antwerp | do |
| " 64 | " 15 | " Hawthorn | Philada | U. K., &c. |
| " 65 | " 16 | " Incha | N. York | Rotterdam |
| " 66 | " 17 | S. S. Fitzroy | Philada | Antwerp |
| " 67 | " 21 | Bk. Wm. Gordon | N. York | do |
| " 68 | " " | Ship Glad Tidings | Philada | Hamburg |
| " 69 | " 24 | S. S. Rhynland | do | Antwerp |
| 52 | | | | |
| | 1881. | | | |
| 268— 70 | Feb'y 24 | Ship Theo. H. Rand | N. York | Antwerp |
| " 71 | " " | S. S. Augustus | do | La Guayra, &c. |
| " 72 | " " | S. S. Azalea | Philada | Genoa |
| " 73 | " 26 | Sp. bk. Nueva Ignacia | Pernambuco | Philada |
| " 74 | " " | Br. " Rowland Hill | Philada | Antwerp |
| 268— 75 | M'ch 2 | S. S. Waesland | N. York | Antwerp |
| " 76 | " " | " Alicia | Port Royal | L'pool |
| " 77 | " " | Bk. Itonus | Padang | N. York |
| " 78 | " 3 | Schr. Wallace J. Boyd | Boston | Philada |
| " 79 | " " | Bk. Avenir | N. York | Rotterdam |
| " 81 | " 9 | " Glenaros | Philada | U. K., &c |
| " 82 | " 12 | S. S. St. Columba | Balto | L'pool |
| " 83 | " " | " Claudius | La Guayra, &c | N. York |
| " 84 | " " | Bk. Payson Tucker | Cardenas | do |
| " 85 | " " | Bg. Maria W. Norwood | Sagua | Boston |
| " 86 | " " | Bk. Havana | Havana | do |
| " 87 | " " | Bk. Icarus | Pernambuco, &c | Philada |
| 54 | | | | |
| 268— 88 | M'ch 18 | Bg. Woodland | Cardenas | Philada |
| " 89 | " | Schr. Mary L. Peters | do | New York |
| " 90 | " | It. bk. Linda G | Balto | Dunkergue |
| " 91 | 19 | Rus. bk. California | Philada | Cork |
| " 92 | 21 | Bk. Belt | N. York | Sharpness |
| " 93 | 22 | Br. bk. Guinevere | Philada | Antwerp |
| " 94 | 23 | Ger. ship Baltimore | Balto | do |
| " 95 | " | It. bk. Marianpoli | do | Q. F. P. for o., &c. |
| " 96 | " | Bk. Sagadahoc | Mobile | Barcelona |
| " 97 | " | Br. bk. Edward Barrow | Balto | Rotterdam |
| " 98 | 24 | Ship Revolving Light | N. York | Sharpness |
| " 99 | 26 | It. bk. Beppino Accame | Balto | Rouen |
| " 100 | " | S. S. Lake Manitoba | Portland | L'pool |
| " 101 | " | " Augustus | N. York | La Guayra, &c. |
| " 102 | " | Schr. Thos. J. Lancaster | Sagua | Boston |
| " 103 | " | Bg. Josephine | Cardenas | do |
| " 104 | " | S. S. Belgenland | Philada | Antwerp |
| " 105 | " | " City of Bristol | do | L'pool |
| " 106 | 29 | Ship Regina | Norfolk | do |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Cotton | 10,000 | | 1¼ | 93 75 | |
| Mdse. | 10,000 | | ½ | 37 50 | |
| Forward | | | | 1,291 88 | |
| 51 Amounts brought forward | | | | 1,291 88 | |
| Wheat, f. p. a. E. C. | 10,000 | | 3½ | 262 50 | |
| Wheat, f. p. a. E. C. | 10,000 | | 3 | 225 | |
| Sugar | 4,925 | | 1¾ | 68 94 | |
| Wheat, f. p. a. E. C. | 9,400 | | 2 | 150 40 | |
| Molasses | 5,000 | | 1¼ | 46 88 | |
| Grain, f. p. a. E. C. | 10,000 | | 3¾ | 281 25 | |
| | | | | 2,326 85 | |
| Ref. petroleum | 873 | | 1 | 6 99 | |
| Wheat, f. p. a. E. C. | 5,000 | | 4¼ | 159 38 | |
| Cotton | 5,000 | | 1½ | 56 25 | |
| Mdse | 5,000 | | 2¼ | 84 38 | |
| ....do | 2,500 | | 2½ | 46 88 | |
| Wheat, f. p. a. E. C. | 5,000 | | 3½ | 131 25 | |
| ....do | 10,000 | | 3 | 225 | |
| ....do | 10,000 | | 2 | 150 | |
| ....do | 7,000 | | 3 | 157 50 | |
| Corn, f. p. a. E. C. | 10,000 | | 3¾ | 281 25 | |
| Mdse | 10,0 0 | | 3⅜ | 30 | |
| Forward | | | | 1,328 88 | |
| 53 Amounts brought forward | | | | 1,328 88 | |
| Wheat, f. p. a. E. C., &c | 7,500 | | 3¾ | 210 94 | |
| Mdse | 6,440 | | ¾ | 38 64 | |
| Ref. petroleum | 10,000 | | 1¾ | 190 | |
| Sugar | 8,150 | | 1½ | 91 69 | |
| Wheat, f. p. a. E. C., &c | 9,922 | | 3¼ | 257 99 | |
| | | | | 2,028 14 | |
| Mdse | 10,000 | | ⅜ | 28 13 | |
| ....do | 0,000 | | ⅜ | 28 13 | |
| Cargo | 10,000 | | 2 | 150 | |
| Sugar | 5,977 | | ⅜ | 28 01 | |
| Rye, f. p. a. E. C. | 10,000 | | 2⅛ | 168 75 | |
| Wheat, do. | 5,000 | | 2¼ | 93 75 | |
| Mdse | 10,000 | | ½ | 37 50 | |
| Cargo | 10,000 | | ¾ | 56 25 | |
| Mdse | 10,000 | | 1¼ | 93 75 | |
| Cargo | 10,000 | | 1¼ | 93 75 | |
| ....do | 10,000 | | 1 | 75 | |
| ....do | 10,000 | | 1½ | 112 50 | |
| Forward | | | | 965 52 | |
| 55 Amounts brought forward | | | | 965 52 | |
| Cargo | 10,000 | | 1¼ | 93 75 | |
| Sugar | 10,000 | | " | 93 75 | |
| Wheat, f. p. a. E. C | 5,000 | | 1½ | 56 25 | |
| ....do | 10,000 | | 1¾ | 140 | |
| ....do | 5,000 | | 2 | 75 | |
| ....do | 10,000 | | 1¾ | 140 | |
| ....do | 10,000 | | " | 131 25 | |
| ....do. ¼ % to be ret'd Rones, not used. No loss claimed. | 5,000 | | 1⅞ | 70 31 | |
| Cotton | 6,000 | | 2¼ | 112 50 | |
| Wheat, f. p. a. E. C. | 10,000 | | 1¾ | 131 25 | |
| ....do | 5,000 | | 1⅞ | 70 31 | |
| ....do | 10,000 | | 1¾ | 131 25 | |
| Mdse | 3,985 | | ½ | 14 95 | |
| ....do | 6,639 | | ½ | 37 34 | |
| Cargo | 10,000 | | ¾ | 93 75 | |
| ....do | 10,000 | | " | 93 75 | |
| ....do | 10,000 | | ⅜ | 30 | |
| ....do | 5,000 | | ½ | 20 | |
| Cotton | 10,000 | | ¾ | 56 25 | |
| Forward | | | | 2,557 18 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 56 | 1881. | | | |
| 268—107 | M'ch 30 | Br. ship Cambridge | Philada. | Antwerp |
| " 108 | " 31 | " bk. Marquis of Lorne | Balto | Havre |
| 268—109 | Apr. 2 | Rus. ship Syskonen | Balto | Newcastle-on-Tyne |
| 110 | " " | " Freydis | N. York | Granville |
| 111 | " 4 | Bk. Alfred Gibbs | Messina | Philada |
| 112 | " " | Br. ship Abbie S. Hart | Phila | Belfast |
| 113 | " 5 | S. S. Vaderland | N. York | Antwerp |
| 114 | " 6 | " Rebecca | Balto | Leith |
| 115 | " " | Br. bk. Mary E. Chapman | do | Havre |
| 116 | " 8 | " ship Fred. E. Scannell | Philada | Antwerp |
| 117 | " " | Bk. Cenisio | N. York | U. K. fo. or Cont., &c. |
| 118 | " 9 | Aus. bk. Sansone | Balto | Calais |
| 119 | " " | " Keloin | do. | Antwerp |
| 120 | " 12 | Bg. Hyperion | Cienfuegos | Boston |
| 121 | " " | Schr. Martha N. Hall | Matanzas | do. |
| 122 | " " | Br. ship. Jessie Burrill | Philada | Antwerp |
| 123 | " " | Bk. Gamaliel | Rio | Balto |
| 58 | 1881. | | | |
| 268—124 | Apr. 12 | Bk. Esther | Havana | Boston |
| " 125 | " " | " Kioto | do | do. |
| " 126 | " " | Ship St. Cloud | Philada | Antwerp |
| " 127 | " " | S. S. Nederland | do | do. |
| " 128 | " " | N. bk. Frames | N. York | Dunkirk |
| " 129 | " " | " Hannah Blanchard | do. | Antwerp |
| " 130 | " " | Ship Lord Lytton | do. | Havre |
| " 131 | " 13 | S. S. Remper | Balto | Dunkirk |
| " 132 | " 14 | " Waesland | N. York | Antwerp |
| " 133 | " 16 | " Gladys | do. | Bordeaux |
| " 134 | " " | It. bk. Nostra Madre | Philada | Honfleur, Fra. |
| " 135 | " " | Rus. bk. Wellamo | Balto | Calais |
| " 136 | " 20 | It. " Carmelina | do. | Dunkirk |
| " 137 | " 21 | S. S. Gleadowe | do. | Havre |
| " 138 | " 25 | Bk. Etta Stewart | Philada | Rotterdam |
| " 139 | " 27 | " Tillie Blake | Havana | Boston |
| " 140 | " " | Dut. bk. Marie Antoinette | Philada | Antwerp |
| " 141 | " " | " Gulmare | Cienfuegos | Philada |
| " 142 | " 28 | " Mistletoe | N. Orls | Havre |
| 60 | 1881. | | | |
| 268—143 | Apr. 29 | It. bk. Filippino | Balto | Dunkirk |
| " 144 | " " | " Eliza C. | do. | Rouen |
| " 145 | " " | S. S. Ponca | N. York | Marseilles |
| 268—146 | May 2 | S. S. Washington | N. York | Marseilles |
| " 147 | " 3 | Bg. Robert Dillon | do. | Vera Cruz |
| " 148 | " 4 | S. S. Oakville | Balto | Rouen |
| 277—149 | " 5 | " Augustus | La Guayra, &c. | N. York |
| 268—150 | " 6 | Ship Gebroeders Smit | Java | Boston |
| " 151 | " 11 | Bk. Jenny | N. York | Cronstadt |
| " 152 | " 12 | It. bk. Marina Rocca | Balto | Rotterdam |
| " 153 | " " | Br. bk. Wave Queen | do. | Dublin |
| " 154 | " 18 | Bk. Haab | Rotterdam | Montreal |
| " 155 | " " | " Venadis | Havana | do |
| " 156 | " " | " Seaward | N. Orleans | Rouen |
| " 157 | " " | S. S. Helvetia | N. York | Antwerp |
| " 158 | " " | " Deronda | Balto | Havre |
| " 159 | " " | Br. bk. Peru | Philada | Antwerp |
| 62 | 1881. | | | |
| 268—160 | May 18 | Ship Altai | Balto | Dublin |
| " 161 | " 23 | S. S. Royal Crown | do. | Kiel |
| " 162 | " " | It. bk. Figlia Tilde | do. | Dunkirk |
| 277—163 | " 24 | S. S. Claudius | La Guayra, &c. | N. York |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| 57 | Amounts brought forward | | | | 2,557 18 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 1¼ | 126 | |
| | do | 10,000 | | 1¼ | 93 75 | |
| | | | | | 2,770 93 | |
| | Wheat, f. p. a. E. C. | 10,000 | | 1 | 75 | |
| | do | 7,500 | | 1¼ | 70 31 | |
| | Cargo | 5,000 | | 2 | 80 | |
| | Corn, f. p. a., under 20 %, &c. | 7,500 | | 1⅜ | 82 50 | |
| | Cargo | 10,000 | | ⅜ | 28 13 | |
| | Wheat, f. p. a., &c. | 6,000 | | ¾ | 33 75 | |
| | do | 10,000 | | 1 | 75 | |
| | do | 10,000 | | 1¼ | 90 | |
| | do | 7,500 | | ⅝ | 49 22 | |
| | do | 5,273 | | ⅝ | 34 60 | |
| | do | 8,000 | | 1 | 60 | |
| | Cargo | 10,000 | | 1¼ | 112 50 | |
| | do | 10,000 | | 1¼ | 93 75 | |
| | Wheat, f. p. a., &c. | 10,000 | | 2½ | 200 | |
| | Cargo | 10,000 | | 1½ | 112 50 | |
| | Forward | | | | 1,197 26 | |
| 59 | Amounts brought forward | | | | 1,197 26 | |
| | Mdse | 4,410 | | 1¼ | 41 34 | |
| | Mdse | 10,000 | | 1 | 75 | |
| | Wheat, f. p. a., &c. | 10,000 | | 1¼ | 100 | |
| | Mdse | 10,000 | | ⅜ | 30 | |
| | Grain, f. p. a., &c. | 10,000 | | ⅞ | 65 62 | |
| | do | 10,000 | | 1 | 75 | |
| | do | 10,000 | | 1⅛ | 84 38 | |
| | Wheat, f. p. a. E. C. | 7,000 | | ½ | 39 38 | |
| | Cargo | 10,000 | | ⅜ | 28 13 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ¾ | 56 25 | |
| | do | 10,000 | | ⅞ | 70 | |
| | do | 10,000 | | ⅞ | 65 62 | |
| | Wheat in bulk, f. p. a. E. C. | 10,000 | | " | 65 62 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ¾ | 56 25 | |
| | Grain, do | 10,000 | | 1 | 75 | |
| | Sugar | 10,000 | | " | 75 | |
| | Ref. petroleum | 5,765 | | 1¼ | 51 89 | |
| | Sugars | 10,000 | | 1⅜ | 120 | |
| | Wheat, f. p. a. E. C. | 9,400 | | 1⅛ | 100 47 | |
| | Forward | | | | 2,472 21 | |
| 61 | Amounts brought forward | | | | 2,472 21 | |
| | Wheat in bulk, f. p. a. E. C. | 10,000 | | ⅞ | 65 62 | |
| | Wheat, f. p. a. E. C. | 7,000 | | " | 45 94 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | | | | | 2,630 65 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ⅝ | 46 88 | |
| | Gen'l cargo | 10,000 | | 1⅜ | 129 | |
| | Wheat, f. p. a. E. C. | 9,288 | | ¾ | 52 25 | |
| | Mdse | 8,905 | | ⅝ | 50 09 | |
| | Sugar | 5,000 | | 3¼ | 121 88 | |
| | Cotton | 7,500 | | 1⅝ | 91 40 | |
| | Wheat, f. p. a., &c. | 10,000 | | ⅞ | 65 62 | |
| | do | 7,500 | | 1 | 56 25 | |
| | Cargo | 6,000 | | 2¼ | 101 25 | |
| | Sugar | 640 | | 2 | 9 60 | |
| | Wheat, f. p. a. E. C. | 6,500 | | 1⅛ | 69 47 | |
| | Grain, gen'l cargo | 7,116 | | ⅜ | 26 69 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ¾ | 60 | |
| | do | 10,000 | | 1 | 80 | |
| | Forward | | | | 951 38 | |
| 63 | Amounts brought forward | | | | 951 38 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ⅞ | 65 62 | |
| | Wheat, f. p. a. E. C. | 10,000 | | ¾ | 56 25 | |
| | do | 9,348 | | ⅞ | 61 35 | |
| | Mdse | 3,675 | | ¾ | 20 68 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 268—164 | May 25 | S. S. Zeeland | Philada | Antwerp |
| " 165 | " 28 | " Claudius | La Guayra, &c. | N. York |
| " 166 | " " | Bk. Romanoff | Philada | Antwerp |
| 268—167 | June 3 | Nor. bk. Saga | Balto | Rotterdam |
| " 168 | " 7 | S. S. Excelsior | N. Orleans | do |
| " 169 | " 8 | " La Gaule | Philada | Cette or Nice |
| " 170 | " " | " Panama | Balto | Gibraltar, f. o. |
| " 171 | " 13 | " Ben Venue | N. Orleans | Antwerp, priv. to cv. ot. |
| " 172 | " 14 | " Mokta | do | Rouen |
| " 173 | " " | " Spearman | Balto | Dublin |
| " 174 | " " | Ship Cashier | N. York | Hamburg |
| " 175 | " 15 | It. bk. Fortunato Repetto | Philada | Cork |
| " 176 | " " | " California | do | Dublin |
| 64 | | | | |
| | 1881. | | | |
| 268—177 | June 17 | Bk. Carla | Bordeaux | Montreal |
| " 178 | " " | S. S. Limosa | Mediterranean ports | do |
| " 179 | " " | Bg. Cacciatore | Barbadoes | do |
| " 180 | " " | Agustina | Cardenas | do |
| " 181 | " " | It. bk. Ricordo | Balto | Honfleur |
| " 182 | " " | " " Volpini | do | Penarth Roads, f. o. |
| " 183 | " " | Bk. Port Royal | Jamaica | Montreal |
| " 184 | " 20 | S. S. Circassian | Montreal | L'pool |
| " 185 | " 21 | " Propitious | Balto | Bordeaux |
| " 186 | " " | It. bt. Secondo B | do | Dunkirk |
| " 187 | " 24 | S. S. Waesland | Philada | Antwerp |
| 268—188 | July 2 | It. bk. Giacle | Balto | Penarth Roads, f.o., &c. |
| " 189 | " 5 | S. S. Ayton | do | Kiel |
| " 190 | " " | " Australia | N. York | Hamburg |
| " 191 | " 7 | Br. bk. Leading Chief | Jamaica Ports | Montreal |
| " 192 | " 9 | " " Mary I. Baker | Philada | Cork |
| " 193 | " 15 | " Atlanta | Barbadoes | Montreal |
| 66 | | | | |
| 268—194 | July 15 | Bk. Arbutus | Marsala | Montreal |
| " 195 | " " | S. S. Toronto | Montreal | L'pool. |
| " 196 | B | | | |
| " 197 | " 16 | Bk. A. F. Stoneman | Philada | Cork |
| " 198 | " 18 | Schr. M. J. Foley | Barbadoes | Montreal |
| " 199 | " 19 | S. S. Diadem | Balto | Leith |
| " 200 | " " | " Iowa | Boston | L'pool. |
| " 201 | " 22 | Br. bk. Edith Carmichael | Philada | Antwerp |
| " 202 | " 25 | S. S. Rhyuland | N. York | do |
| " 203 | " " | Bk. Prince Llewellyn | Ponce P. R. | Montreal |
| " 204 | " 29 | " Lady of the Lake | Guadeloupe | N. York |
| " 205 | " 30 | Rus. ship Imatra | Balto | Waterford |
| " 206 | " " | Bk. Monte A | do | Bordeaux |
| 268—207 | Aug. 1 | S. S. Arch Druid | Balto | Bordeaux |
| " 208 | " 2 | " Cheswick | N. York | Hull |
| " 209 | " 3 | Bk. Maple Leaf | N. Orleans | Antwerp |
| " 210 | " 5 | Ship Magnolia | Philada | do |
| 68 | | | | |
| 268—211 | Aug. 5 | Bg. Stocton | Sagua | N. York |
| 212 | " 6 | Bk. Maggie Miller | Philada | Antwerp |
| 213 | " 9 | " Marquis of Lorne | Balto | do |
| 214 | " " | " Navarch | do | do |
| 215 | " 10 | S. S. Sandringham | do | Calais |
| 216 | " 11 | Ship Shelbourne | Philada | Cork |
| 217 | " 16 | " Fred. E. Scammell | do | Antwerp |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount, insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 10,000 | | 3/4 | 30 | |
| ....do | 1,974 | | 3/4 | 11 10 | |
| Wheat, f. p. a. E. C | 10,000 | | 1 | 80 | |
| | | | | 1,276 38 | |
| Wheat, f. p. a. E. C | 3,580 | | 7/8 | 23 50 | |
| ....do | 6,000 | | 1 1/8 | 69 | |
| ....do | 10,000 | | 3/4 | 56 25 | |
| ....do | 10,000 | | " | 56 25 | |
| ....do | 7,820 | | 1 1/4 | 89 93 | |
| ....do | 6,100 | | 1 | 56 12 | |
| Wheat & maize, f. p. a. E. C | 6,000 | | 3/4 | 33 75 | |
| Corn, do | 5,000 | | 1 | 37 50 | |
| Wheat, do | 4,000 | | 7/8 | 28 | |
| ....do. do | 7,000 | | 1 1/8 | 63 | |
| Forward | | | | 513 30 | |
| 65 Amounts brought forward | | | | 513 30 | |
| Liquors | 1,916 | | 2 1/2 | 35 92 | |
| Cargo | 7,500 | | 1 1/4 | 70 31 | |
| ....do | 3,000 | | 2 1/2 | 56 25 | |
| ....do | 3,300 | | 2 | 49 50 | |
| Wheat, f. p. a. E. C | 2,800 | | 7/8 | 18 96 | |
| ....do | 4,407 | | " | 28 93 | |
| Sugar | 5,000 | | 2 1/2 | 93 75 | |
| Mdse | 8,500 | | 1/2 | 31 88 | |
| Wheat, f. p. a. E. C | 10,000 | | 5/8 | 46 88 | |
| ....do | 9,278 | | 5/8 | 60 90 | |
| Mdse | 8,861 | | 5/8 | 26 58 | |
| | | | | 1,033 16 | |
| Wheat | 6,840 | | 7/8 | 44 89 | |
| Wheat, f. p. a. E. C | 10,000 | | 3/4 | 56 25 | |
| ....do | 10,000 | | 5/8 | 46 88 | |
| Mdse | 5,000 | | 2 1/2 | 93 75 | |
| Wheat, f. p. a. E. C | 5,000 | | 1 | 40 | |
| Cargo | 3,000 | | 2 | 45 | |
| Forward | | | | 326 77 | |
| 67 Amounts brought forward | | | | 326 77 | |
| Cargo | 3,000 | | 2 1/4 | 50 62 | |
| Cargo | 5,000 | | 3/8 | 14 06 | |
| Wheat, f. p. a. E. C | 10,000 | | 1 | 80 | |
| Mdse | 6,000 | | 2 | 90 | |
| Wheat, f. p. a. E. C | 6,000 | | 3/4 | 33 75 | |
| Mdse | 10,000 | | 3/8 | 28 12 | |
| Wheat, f. p. a. E. C | 10,000 | | 1 | 80 | |
| Mdse | 10,000 | | 3/8 | 28 12 | |
| Sugar | 5,000 | | 2 1/4 | 84 38 | |
| ....do | 283 | | 1 1/2 | 3 18 | |
| Wheat | 4,055 | | 7/8 | 26 60 | |
| ....do | 6,000 | | " | 39 38 | |
| | | | | 884 98 | |
| Wheat | 10,000 | | 3/4 | 56 25 | |
| ....do f. p. a., &c | 10,000 | | 1 1/4 | 93 75 | |
| ....do | 7,020 | | 1 1/8 net | 78 98 | |
| ....do | 10,000 | | 1 | 80 | |
| Forward | | | | 308 98 | |
| 69 Amounts brought forward | | | | 308 98 | |
| Sugar | 9,483 | | 1 1/4 | 88 90 | |
| Wheat, f. p. a., &c | 10,000 | | 1 3/4 | 140 | |
| ....do | 10,000 | | " | 131 25 | |
| ....do | 7,650 | | " | 100 40 | |
| ....do | 10,000 | | 1 | 75 | |
| ....do | 8,500 | | 1 3/4 | 119 | |
| ....do | 4,000 | | 2 1/8 | 80 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 268—218 | Aug. 18 | Bk. Ocean Pearl | Havana | Del. Breakwater, f. o |
| 219 | " 24 | Aus. bk. Ture | Philada | Q. F. P., f. o., &c |
| 220 | " 27 | It. " Luce | do | U. K. or C., &c |
| 222 | " 29 | S. S. Hesleden | do | Cork |
| 268—223 | Sept. 7 | S. S. Panama | Balto | Sharpness Dock |
| " 224 | " " | " Heckla | Philada | Antwerp |
| " 225 | " 9 | Bgne. Fe | Montreal | do |
| " 226 | " 13 | Br. bgne. Lottie Stewart | Alexandria, Va | Cork, f. o |
| " 227 | " 15 | Ship Paul Revere | Japan | San Francisco |
| " 228 | " 16 | S. S. Leo | Philada | Antwerp |
| 70 | | | | |
| | 1881. | | | |
| 268—229 | Sept. 22 | Br. bk. Peru | Philada | U. K. or Cont |
| " 230 | " 24 | S. S. Lake Champlain | Montreal | L'pool |
| " 231 | " 27 | Nor. bk. Ariadne | do | Cork, &c., f. o |
| 268—232 | Oct. 5 | Bk. Brimga | Rotterdam | Montreal |
| " 233 | " " | " Kenton | W. C. of South America. | U. S., N. of Hatteras |
| " "4 | " 7 | Nor. ship Dora | Philada | Antwerp |
| " "5 | " 8 | Bk. Satar | Montreal | Cork, f. o |
| " 236½ | " 11 | S. S. Wearmouth | Galveston | L'pool |
| " 237 | " 14 | It. bk. Minerva | Philada | U. K. or Cont |
| " "8 | " " | S. S. Lucerne | Montreal | Glasgow |
| " "9 | " " | Br. ship Kingsport | Balto | U. K. or Cont |
| " 240 | " " | S. S. Acacia | Savannah | L'pool |
| " 241 | " " | " Dominion | Montreal | do |
| " 242 | " " | " Toronto | do | do |
| " 243 | " 15 | " Eastbourne | Norfolk | do |
| " 244 | " 17 | Bk. Ino | Padang | N. York |
| " 245 | " 19 | S. S. Perwian | Montreal | L'pool |
| 72 | | | | |
| | 1881. | | | |
| 268—246 | Oct. 21 | Bg. Magdala | Havana | Philada |
| " 247 | " " | " Emeline | do | do |
| " 248 | " 24 | Schr. Joshua L. Bragdon | Boston | do |
| " 249 | " 29 | Br. bk. Lina | Philada | Q. for P., f. o |
| " 250 | " 31 | Schr. Jos. W. Foster | Boston | Philada |
| " 251 | " " | " Joshua L. Bragdon | do | do |
| " 236 | " 10 | Ship David Crockett | San Francisco | N. York |
| 268—252 | Nov. 2 | Rus. bk. Usko | Balto | Q. F. P., f. o |
| " 253 | " " | S. S. Istrian | Boston | L'pool |
| " 254 | " 3 | It. bk. Monte Allegro R | Balto | U. K. or Cont., &c |
| " 255 | " 4 | " " Gerolamo Olivare | do | do |
| " 256 | " 9 | Ship Chieftain | Konigsberg | Philada |
| " 257 | " " | S. S. Heckla | Philada | Antwerp |
| " 258 | " " | Shy. Salisburg | Manilla | New York |
| " 259 | " " | Canal boat E. Vanzant | Thompson's Point | Crown Point, &c., via canal. |
| " 260 | " 11 | S. S. Keroula | Mediterranean ports | Montreal |
| " 261 | " " | " Enchantress | Charleston | L'pool |
| 74 | | | | |
| | 1881. | | | |
| 268—262 | Nov. 11 | Ship Rock City | Galveston | L'pool |
| " 263 | " " | S. S. Grecian | Montreal | Glasgow |
| " 264 | " " | " Toronto | do | L'pool |
| " 265 | " " | It. bk. Franceschina | Balto | Q. F. P., f. o |
| " 267 | " 21 | Rus. ship Syskonen | do | Waterford, Ire |
| " 269 | " 25 | It. bk. Enrichetta Dall Orso | do | U. K. or Cont., &c |
| " 270 | " 26 | Swed. bk. Brage | Charleston | London |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Sugar | 10,000 | | 1 | 80 | |
| Wheat, f. p. a., &c | 10,000 | | 1¾ | 140 | |
| ....do | 10,000 | | " | 140 | |
| Grain, f. p. a., &c | 10,000 | | 1¼ | 100 | |
| | | | | 1,503 53 | |
| Wheat, f. p. a., &c | 8,875 | | 1⅛ | 99 84 | |
| Cargo | 10,000 | | ⅜ | 30 | |
| ....do | 5,000 | | 2⅜ | 93 75 | |
| Wheat, f. p. a., &c | 6,000 | | 2¾ | 123 75 | |
| Cargo | 10,000 | | 2 | 150 | |
| Wheat, f. p. a., &c | 9,440 | | 1¾ | 132 16 | |
| Forward | | | | 629 50 | |
| 71 Amounts brought forward | | | | 629 50 | |
| Wheat, 20%. P. A | 10,000 | | 4 | 320 | |
| Cargo | 7,800 | | ⅜ | 29 25 | |
| Wheat | 10,000 | | 2¾ | 82 50 | |
| | | | | 1,061 25 | |
| Gin, &c | 5,000 | | 2⅛ | 93 75 | |
| Nitrate of soda | 5,000 | | 3 | 120 | |
| Grain, subject to 20 % average | 10,000 | | 3¾ | 300 | |
| Grain | 5,000 | | 3 | 112 50 | |
| Cotton | 10,000 | | 1¼ | 93 75 | |
| Grain | 8,000 | | 3 1-16 | 196 | |
| ....do | 5,000 | | ⅝ | 24 44 | |
| ....do | 10,000 | | 4 | 320 | |
| Cotton | 10,000 | | ¾ | 56 25 | |
| Cargo | 10,000 | | ½ | 37 50 | |
| Mdse | 10,000 | | " | 37 50 | |
| Advances against freight | 1,600 | | ¾ | 9 | |
| Coffee | 5,000 | | 2 | 75 | |
| Cargo | 5,000 | | ½ | 18 75 | |
| Forward | | | | 1,493 44 | |
| 73 Amounts brought forward | | | | 1,493 44 | |
| Sugar | 5,000 | | 1½ | 60 | |
| Sugar | 5,000 | | 1 | 40 | |
| ....do | 6,416 | | ⅝ | 32 08 | |
| Corn subject to 20 % average | 5,000 | | 4½ | 180 | |
| Sugar | 1,653 | | ⅝ | 8 27 | |
| ....do | 2,347 | | " | 11 73 | |
| Cargo | 5,000 | | 2¾ | 103 12 | |
| | | | | 1,928 64 | |
| Wheat, f. p. a. E. C | 5,000 | | 3⅝ | 135 94 | |
| Mdse | 5,430 | | ½ | 20 36 | |
| Wheat, f. p. a. E. C | 8,000 | | 3⅝ | 232 50 | |
| ....do | 10,000 | | 3¾ | 281 25 | |
| Rags | 5,000 | | 2½ | 100 | |
| Grain | 10,000 | | 1 | 40 | |
| Hemp | 10,000 | | 2½ | 187 50 | |
| Powder | 10,000 | | 40c. | 40 | |
| Cargo | 5,000 | | 1¾ | 65 62 | |
| Cotton | 10,000 | | ¾ | 56 25 | |
| Forward | | | | 1,159 42 | |
| 75 Amounts brought forward | | | | 1,159 42 | |
| Cotton | 10,000 | | 2 | 150 | |
| Cargo | 5,000 | | ⅞ | 32 81 | |
| ....do | 5,000 | | " | 32 81 | |
| Wheat | 1,483 | | 3⅞ | 43 10 | |
| ....do., f. p. a. E. C | 10,000 | | 3 | 225 | |
| ....do. do | 7,000 | | 2⅝ | 137 81 | |
| Spirits turpentine | 10,000 | | 2½ | 200 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 268—271 | Nov. 28 | Swed. bk. Virgo | Balto | Limerick |
| 268—275 | Dec. 2 | Bk. Guldregn | Balto | Dublin |
| " 277 | " 3 | " Agostina | do | U. K. or Cont. |
| " 278 | " 5 | " Pohona | Savannah | L'pool |
| " 279 | " " | Ship Theodore | N. York | Marseilles |
| " 280 | " " | It. bk. Italo | Balto | Galway |
| " 281 | " 6 | S. S. Hecla | Philada | Antwerp |
| " 282 | " 13 | Bk. Monrovia | N. York | Sierra Leone |
| " 283 | " 14 | Br. bk. Luscor | Balto | Cork |
| " 284 | " 17 | It. " Attio | do | U. K. or Cont., &c. |
| 76 | | | | |
| | 1881. | | | |
| 268—289 | Dec. 21 | S. S. Avlona | Mediterranean ports | Montreal |
| " 290 | " " | Br. bk. Charles Murdock | Philada | Q. F. P., f. o. |
| " 292 | " 23 | " Angioletta Bozzo | Balto | Belfast |
| " 293 | " " | S. S. Deronda | do | Bordeaux |
| " 294 | " " | Bk. Marianopoli | do | Limerick |
| " 296 | " 27 | " Wm. Wilcox | do | do |
| " 297 | " " | Ton Welaka | Philada | Galveston |
| " 300 | " 30 | It. bk. Marchim | Balto | U. K. or Cont |
| | 1882. | | | |
| 268—301 | Jan'y 5 | Bk. Confictenza | Balto | Leith, Scotland |
| " 302 | " " | Schr. Ruth T. Carlisle | Philada | Galveston |
| " 303 | " 7 | Bk. Kings County | Balto | Sharpness Dock |
| " 307 | " 18 | Ship Metmerby | N. Orl's | L'pool |
| " 309 | " 20 | Schr. Fred'k J. Collins | Philada | Galveston |
| " 310 | " 21 | It. bk. Eliza C | Balto | Q. F. P. for ex Rouen |
| " 311 | " " | " " Luce | do | Calais, France |
| " 315 | " " | Ship Ardmore | Savannah | L'pool |
| " 317 | " 24 | Btn. Piemonti | Denia | Philada |
| 78 | | | | |
| | 1882. | | | |
| 268—318 | Jan'y 25 | It. bk. F. Pirandelle | Messina | Philada |
| " 319 | " " | Schr. Bessie Morris | Boston | do |
| " 322 | " 27 | Ship Tonawanda | Mobile | L'pool |
| " 324 | " 28 | Bk. Alma Barabina | N. York | U. K. or Cont. not N. of Hbg. |
| " 325 | " 30 | " Atlas | Philada | Constantinople |
| 268—327 | Feb'y 4 | Bk. Baciccia | Balto | Q. F. P., f. o., &c. |
| " 333 | " 8 | " Bartholomeo Simone | do | Maryport, Eng. |
| " 336 | " 9 | Bktn. Jennie Sweeney | Philada | Galveston |
| " 338 | " 13 | Ship Maryland | Norfolk | L'pool |
| " 339 | " 14 | Bk. Idea | Balto | Honfleur, France |
| " 344 | " 24 | " Sunbeam | Lisbon | Philada |
| " 348 | " 25 | S. S. Switzerland | Philada | Antwerp |
| 268—353 | M'ch 2 | Bk. Jane Sprott | Formosa | Montreal |
| " 356 | " 3 | " Nicolina | Norfolk | L'pool |
| " 357 | " " | " Strathay | Savannah | do |
| 80 | | | | |
| | 1882. | | | |
| 268—358 | M'ch 3 | S. S. Thanemore | Balto | L'pool |
| " 359 | " " | " Zeeland | N. York | do |
| " 360 | " 7 | Bk. Westfold | Savannah | Cronstadt |
| " 370 | " 13 | S. S. Bavarian | Boston | L'pool |
| " 371 | " " | " Circassian | Portland | do |
| " 372 | " " | " Brooklyn | do | do |
| " 374 | " 14 | " Atlas | Boston | do |
| " 378 | " 15 | Bk. Polly | Mayaguez | Halifax |
| " 379 | " 16 | S. S. Istrian | Boston | L'pool |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Wheat, f. p. a. E. C | 6,990 | | 2¼ | 131 06 | |
| | | | | 2,112 01 | |
| Wheat | 4,619 | | 2½ | 86 60 | |
| .....do., f. p. a. E. C | 5,750 | | 2¾ | 118 59 | |
| Cotton | 10,000 | | 1¼ | 93 75 | |
| Wheat | 10,000 | | 2¼ | 168 75 | |
| .....do | 7,500 | | 3⅛ | 175 79 | |
| Mdse | 10,000 | | ½ | 49 | |
| Cargo | 10,000 | | 2 | 150 | |
| Wheat | 8,558 | | 3 | 192 55 | |
| .....do., f. p. a., &c | 10,000 | | 2½ | 187 50 | |
| Forward | | | | 1,213 53 | |
| 77 Amounts brought forward | | | | 1,213 53 | |
| Cargo | 5,000 | | 2 | 75 | |
| Wheat | 4,723 | | 4¼ | 150 55 | |
| Wheat, f. p. a. 4th clause | 10,000 | | 3 | 225 | |
| .....do. E. C | 10,000 | | 1¾ | 131 25 | |
| Wheat | 7,500 | | 2¾ | 154 69 | |
| .....do., f. p. a. 3d clause | 10,000 | | 3¼ | 243 75 | |
| Iron bridge-work | 10,000 | | 1½ | 112 50 | |
| Wheat, f. p. a. E. C | 9,250 | | 2¾ | 190 78 | |
| | | | | 2,499 05 | |
| Wheat, f. p. a. 3d clause | 7,500 | | 2¾ | 154 69 | |
| Iron bridge work. M'c'h'y clause | 10,000 | | 1½ | 120 | |
| Wheat, f. p. a. 3rd clause | 10,000 | | 3¼ | 243 75 | |
| Cotton | 10,000 | | 1⅞ | 140 62 | |
| Iron bridge-work. M'c'h'y clause | 10 000 | | 1½ | 120 | |
| Wheat, f. p. a., &c | 10,000 | | 2¾ | 206 25 | |
| .....do | 8,714 | | " | 179 73 | |
| Cotton | 10,000 | | ¾ | 56 25 | |
| Mdse | 10,000 | | 2 | 160 | |
| Forward | | | | 1,381 29 | |
| 79 Amounts brought forward | | | | 1,381 29 | |
| Mdse | 7,500 | | 2 | 120 | |
| Sugar | 8,695 | | ⅝ | 43 47 | |
| Cotton | 10,000 | | 2¼ | 168 75 | |
| Wheat, f. p. a., &c | 5,000 | | 2¾ | 103 12 | |
| Ref. petroleum | 5,000 | | 3½ | 131 25 | |
| | | | | 1,947 88 | |
| Wheat, f. p. a., &c | 10,000 | | 2¾ | 206 25 | |
| .....do | 10,000 | | " | 206 25 | |
| Iron bridge-work. M'c'h'y clause | 10,000 | | 1½ | 112 50 | |
| Cotton | 10,000 | | 1 | 75 | |
| Wheat, f. p. a., &c | 5,000 | | 3 | 112 50 | |
| Cork-wood | 10,000 | | 1½ | 120 | |
| Cargo | 10,000 | | 1½ | 40 | |
| | | | | 872 50 | |
| Sugar, 7/8 average on any 2 series of 5,000 | 5,000 | | 5 | 187 50 | |
| Cotton | 8,809 | | ¾ | 49 55 | |
| .....do | 10,000 | | " | 56 25 | |
| Forward | | | | 293 30 | |
| 81 Amounts brought forward | | | | 293 30 | |
| Cargo | 8,451 | | ½ | 31 69 | |
| .....do | 10,000 | | " | 37 50 | |
| Cotton | 10,000 | | 3 | 225 | |
| Mdse | 10,000 | | ½ | 37 50 | |
| .....do | 9,732 | | " | 36 50 | |
| .....do | 9,278 | | " | 34 79 | |
| .....do | 10,000 | | " | 37 50 | |
| .....do | 5,000 | | 2¼ | 84 37 | |
| .....do | 10,000 | | ½ | 37 50 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 268—381 | M'ch 23 | S. S. Dominion | Portland | L'pool |
| " 383 | " 27 | Schr. Christina Moore | Bahia | St. John |
| " 384 | " 28 | S. S. Shildon | N. York | West Hartlepool |
| 268—398 | Apr. 10 | S. S. Samaria | Boston | L'pool |
| " 399 | " " | Bk. L. E. Cann | Tecolutta & Vera Cruz | N. York |
| " 400 | " 12 | S. S. Concordia | Balto | Glasgow |
| " 401 | " " | " Thanemore | do | L'pool |
| " 405 | " 14 | " Greecian | do | Glasgow |
| 82 | | | | |
| | 1882. | | | |
| 268—409 | Apr. 19 | S. S. Euclid | N. York | L'pool |
| " 420 | " 22 | Bg. Zeno | Bahia | Montreal |
| " 427 | " 25 | S. S. Toronto | Balto | L'pool |
| " 428 | " " | Ship Anna Camp | N. York | San Diego |
| " 431 | " 26 | Bk. Ocean | Barbadoes | Montreal |
| " 432 | " " | " Victor | N. York | Vera Cruz |
| " 433 | " 29 | S. S. Guillermo | Balto | L'pool |
| 268—440 | May 1 | Schr. Eugenie | Montreal | St. John, N. F. |
| " 455 | " 6 | Str. Thingoalla | N. York via Copenhagen, &c. | St. Petersburg |
| " 458 | " 10 | " Australia | N. York via Corunna | Santander |
| " 471 | " 13 | Bk. Neva | Porto Rico | Montreal |
| " 472 | " " | Brig John Boyd | N. York | Guadeloupe |
| " 473 | " 15 | Bk. Addee E. Sleeper | do | Vera Cruz |
| " 479 | " 18 | " Br. Queen | Charente | Montreal |
| " 480 | " " | S. S. Waesland | N. York | Antwerp |
| " 481 | " 19 | Bk Mary A. Nelson | Havana | N. York |
| " 483 | " 20 | " Saturn | Porto Rico | Halifax |
| 84 | | | | |
| | 1882. | | | |
| 268—484 | May 20 | Bk. Emma Parker | Galveston | L'pool |
| " 485 | " " | S. S. Barcelona | Mediterranean ports | Montreal |
| " 486 | " " | Bk. Eliza S. Milligan | Rotterdam | do |
| " 487 | " " | " Ariete | Barbadoes | do |
| " 488 | " " | " Nyhaam | Salt River, Jamaica | do |
| " 496 | " 26 | " Anne & Cecilia | Aracaju | N. York |
| 268—508 | June 5 | S. S. American | Balto | L'pool |
| " 513 | " 9 | Bk. Suez | Jamaica | Montreal |
| " 514 | " " | " Eliser | Lavamia La Mar, &c | do |
| " 534 | " 15 | S. S. Switzerland | Philada | Antwerp |
| " 540 | " 19 | Bktn. Allegra | Porto Rico | Montreal |
| " 541 | " 20 | Bg. Bertha | Oporto | do |
| " 542 | " 21 | Bktn. Belle | Barbadoes | St. John, N. B. |
| " 551 | " 23 | S. S. Lake Manitoban | Montreal | L'pool |
| " 556 | " 27 | Bk. Alice Roy | Barbadoes | Montreal |
| " 557 | " 28 | " Eden | Jamaica | do |
| 86 | | | | |
| | 1882. | | | |
| 268—558 | June 28 | S. S. Hibernian | Mont'l | L'pool |
| " 562 | " " | Bk. Yorkshire | Barbadoes | Montreal |
| " 663 | " 30 | S. S. Erin | N York | L'pool |
| " 573 | " " | " Switzerland | Philada | Antwerp |
| 268—568 | July 1 | S. S. Mississippi | Montreal | L'pool |
| " 569 | " " | Bk. G. P. Sherwood | Barbadoes | Montreal |
| " 571 | " " | " Stella | Jamaica | do |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| | Mdse | 10,000 | | ⅛ | 37 50 | |
| | do | 5,000 | | 2¼ | 84 37 | |
| | Mdse., f. p. a. E. C | 5,000 | | 3¼ | 28 12 | |
| | | | | | 1,005 64 | |
| | Mdse | 10,000 | | ⅜ | 28 12 | |
| | do | 10,000 | | 3 | 225 | |
| | do | 9,851 | | ⅜ | 27 70 | |
| | do | 10,000 | | " | 28 12 | |
| | do | 10,000 | | ½ | 37 50 | |
| | Forward | | | | 346 44 | |
| 83 | Amounts brought forward | | | | 346 44 | |
| | Mdse | 7,035 | | ⅜ | 19 80 | |
| | Sugar | 5,000 | | 2¼ | 84 37 | |
| | Mdse | 10,000 | | ½ | 37 50 | |
| | do | 5,000 | | 3 | 112 50 | |
| | Sugar | 5,000 | | 2 | 75 | |
| | Mdse | 9,000 | | 1½ | 108 | |
| | do | 7,223 | | ½ | 27 09 | |
| | | | | | 810 70 | |
| | Mdse | 5,000 | | 1 | 37 50 | |
| | do | 5,000 | | 1 | 37 50 | |
| | do | 10,000 | | ½ | 37 50 | |
| | Sugar | 5,000 | | 2 | 75 | |
| | Mdse | 5,000 | | 1½ | 56 25 | |
| | do | 10,000 | | 120 | | |
| | do | 5,000 | | 2½ | 93 75 | |
| | do | 1,955 | | ⅜ | 5 50 | |
| | do | 5,000 | | 1 | 37 50 | |
| | Sugar | 153 | | 2 | 2 30 | |
| | Forward | | | | 502 80 | |
| 85 | Amounts brought forward | | | | 502 80 | |
| | Cotton, f. p. a., &c | 5,282 | | 1¼ | 49 52 | Canc'l'd; a m 't ret'd. |
| | Mdse | 5,000 | | " | 46 88 | |
| | do | 5,000 | | 2¼ | 84 38 | |
| | do | 5,000 | | 2 | 75 | |
| | Sugar | 5,000 | | 2 | 75 | |
| | Mdse | 2,500 | | 5 | 93 75 | |
| | | | | | 927 33 | |
| | Mdse | 3,203 | | ½ | 12 | |
| | Sugar | 5,000 | | 2 | 80 | |
| | do | 5,000 | | " | 80 | |
| | Mdse | 6,418 | | ⅜ | 19 26 | |
| | Sugar | 5,000 | | 2 | 75 | |
| | Mdse | 5,000 | | " | 75 | |
| | do | 5,000 | | 1¾ | 65 62 | |
| | Grain, f. p. a. E. C | 5,000 | | ½ | 18 75 | |
| | Mdse | 5,000 | | 2½ | 93 75 | |
| | do | | | 2 | 75 | |
| | Forward | | | | 594 38 | |
| 87 | Amounts brought forward | | | | 594 38 | |
| | Mdse., f. p. a | 5,000 | | ⅜ | 14 06 | |
| | Mdse., f. p. a | 5,000 | | 2½ | 93 75 | |
| | do | 10,000 | | ⅜ | 28 12 | |
| | do | 5,000 | | " | 15 | |
| | | | | | 745 31 | |
| | Mdse | 5,000 | | ½ | 18 75 | |
| | do | 5,000 | | 2 | 75 | |
| | do | 5,000 | | 2½ | 93 75 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 268—572 | July 1 | Bk. Halifax | Jamaica | Montreal |
| " 573 | " 5 | " Amazon | ....do | ....do |
| " 574 | " " | " Celina | Porto Rico | ....do |
| " 575 | " " | " Khedive | Jamaica | ....do |
| " 576 | " " | S. S. Olympia | New York via Avonmouth & Portishead. | Bristol |
| " 577 | " " | " Colorado | Galveston | N. York |
| " 579 | " 8 | " Circassian | Montreal | L'pool |
| " 580 | " 10 | Bk. Colin E. McNeill | Surinam | Boston |
| " 581 | " " | Bg. Economy | Barbadoes | ....do |
| " 582 | " " | S. S. Burswell | Balto | Bordeaux |
| 88 | | | | |
| | 1882. | | | |
| 268—583 | July 10 | S. S. Lake Huron | Montreal | L'pool |
| " 589 | " 11 | Br. bk. Belle Waters | Cienfuegos | New York |
| " 595 | " 20 | S. S. Lake Winnipeg | Montreal via Sydney | L'pool |
| " 596 | " 22 | " Canonburg | ....do | London |
| " 604 | " 26 | " Lake Champlain | ....do | L'pool |
| " 605 | " " | " Salisbury | Baltimore | Marseilles |
| " 606 | " " | " Newminister | ....do | Avonmouth Dock, Bristol, E. |
| " 612 | " 27 | Bg. Alaska | Maceio | Philada. |
| " 613 | " " | S. S. Clandon | Philada. | Rio de Janeiro |
| " 614 | " 28 | " Matthew Bellington | Balto | Antwerp |
| 268—615 | Aug. 1 | S. S. Ashbrooke | Balto | Limerick |
| " 616 | " 3 | " Celurnum | Philada. | Antwerp |
| " 620 | " 5 | " Brantford City | Balto | Havre |
| " 624 | " 7 | " Bellini | ....do | U. K., &c |
| " 627 | " 9 | Bk. Gloamin | N. York | Sharpness |
| " 628 | " " | " Kedron | ....do | Q'town or Falmouth, f. o., &c. |
| " 629 | " " | " Angelo | Philada. | |
| 90 | | | | |
| | 1882. | | | |
| 268—632 | Aug. 14 | Br. ship Prince Louis | N. York | Antwerp |
| " 635 | " 17 | S. S. Belgenland | Philada. | ....do |
| " 636 | " " | It. bk. Rosa Chichizola | ....do | Q. F. P., f. o., &c. |
| " 637 | " 19 | S. S. Gulf of Suez | Balto | Newcastle-on-Tyne |
| " 638 | " 21 | " Juliet | Montreal via Sydney | London |
| " 639 | " 22 | " Lake Huron | ....do | L'pool |
| " 640 | " " | " Eadymion | Balto | Marseilles |
| " 643 | " 25 | " Panama | ....do | ....do |
| " 644 | " 26 | " Turquoise | ....do | Bordeaux |
| " 645 | " " | " Crane | ....do | Q. F., f. o., &c. |
| " 646 | " " | Bk A. Gondey | Philada. | Dunkirk |
| " 648 | " 29 | Nor. bk. Frida | Jamaica ports | Montreal |
| " 649 | " " | Dan. " Excelsior | ....do | ....do |
| " 650 | " " | Br. bgt. Ida | ....do | ....do |
| " 651 | " " | Bk. Agnes | Barbadoes | ....do |
| " 652 | " " | " S. J. Bogart | Philada. | U. K. or Cont., &c. |
| " 653 | " " | S. S. Ontario | Montreal | L'pool |
| " 654 | " 30 | " Anatolia | Philada. | Calais, Fr. |
| " 655 | " 31 | " Carlton Tower | Balto | U. K. or Cont. |
| 92 | | | | |
| | 1882. | | | |
| 268—656 | Sept. 2 | S. S. Deronda | Balto | St. Nazaire |
| " 661 | " 9 | " Lord Clive | Phila | L'pool |
| " 662 | " " | Bk. Argo | N. York | U. K. or Cont |
| " 663 | " " | " Twee Zusters | Trinidad | Montreal |
| " 664 | " " | Br. bk. Hope | Porto Rico | ....do |
| " 667 | " 11 | S. S. Nessmore | Balto | L'pool |
| " 668 | " " | Bk. Cathella | Barbadoes | Montreal |
| " 669 | " " | " Jacob W. Settewall | Philada | U. K. or Cont |
| " 671 | " 14 | S. S. Dominion | Montreal | L'pool |
| " 672 | " 15 | " Rowland | Newport News | Cork, f. o |
| " 673 | " " | " Mounts Bay | Balto | Antwerp |
| " 675 | " 16 | " Iniziativa | Philada | Dunkirk |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| | Mdse | 5,000 | | 3½ | 131 25 | |
| | do | 5,000 | | 2½ | 93 75 | |
| | do | 5,000 | | 2 | 75 | |
| | do | 5,000 | | " | 75 | |
| | do, f. p. a. E. C | 10,000 | | ⅜ | 28 13 | |
| | Cotton | 10,000 | | ⅝ | 46 87 | |
| | Mdse | 5,000 | | ⅜ | 14 06 | |
| | do | 10,000 | | 1½ | 112 50 | |
| | do | 1,184 | | 1½ | 11 10 | |
| | Grain, f. p. a. E. C | 10,000 | | ¾ | 56 25 | |
| | Forward | | | | 831 41 | |
| 89 | Amounts brought forward | | | | 831 41 | |
| | Mdse | 5,000 | | ⅜ | 14 06 | |
| | Mdse | 5,000 | | 1½ | 65 62 | |
| | do | 5,000 | | ⅜ | 14 06 | |
| | do | 5,000 | | 1 | 37 50 | |
| | do | 3,000 | | ⅜ | 8 44 | |
| | Wheat, f. p. a. E. C | 5,000 | | ¾ | 28 12 | |
| | do. do | 5,000 | | " | 28 13 | |
| | Sugar | 5,000 | | 2½ | 100 | |
| | Mdse., subj't to 5% average | 10,000 | | ¾ | 60 | |
| | Wheat, f. p. a. E. C | 5,000 | | " | 28 12 | |
| | | | | | 1,215 46 | |
| | Wheat, f. p. a. E. C | 5,000 | | ¾ | 28 12 | |
| | do | 10,000 | | " | 60 | |
| | do | 5,000 | | " | 28 12 | |
| | do | 10,000 | | " | 56 25 | |
| | do | 5,000 | | 1½ | 56 25 | |
| | do | 5,000 | | 1¾ | 65 63 | |
| | do | 5,000 | | 1 | 40 | |
| | Forward | | | | 334 37 | |
| 91 | Amounts brought forward | | | | 334 37 | |
| | Wheat, f. p. a. E. C | 2,500 | | 1¾ | 32 81 | |
| | Mdse | 10,000 | | ⅜ | 30 | |
| | Wheat, f. p. a. E. C | 2,000 | | 1½ | 20 | |
| | Mdse., do | 10,000 | | ¾ | 56 25 | |
| | Mdse | 3,000 | | 1¾ | 28 13 | |
| | do | 5,000 | | ¾ | 14 06 | |
| | Wheat, f. p. a. E. C | 7,500 | | ⅝ | 42 19 | |
| | do | 10,000 | | " | 56 25 | |
| | do | 5,000 | | " | 28 12 | |
| | do | 7,000 | | " | 39 38 | |
| | Grain, f. p. a. E. C | 3,000 | | 2 | 48 | |
| | Mdse | 5,000 | | " | 75 | |
| | do | 5,000 | | 2½ | 93 75 | |
| | do | 5,000 | | 2 | 75 | |
| | do | 5,000 | | 3 | 112 50 | |
| | Wheat, f. p. a. E. C | 5,000 | | 1¾ | 70 | |
| | Mdse | 3,500 | | ½ | 13 12 | |
| | Wheat, f. p. a. E. C | 9,200 | | ¾ | 55 20 | |
| | do | 10,000 | | " | 56 25 | |
| | | | | | 1,280 38 | |
| 93 | Mdse., f. p. a. E. C | 10,000 | | ¾ | 56 25 | |
| | Mdse | 2,811 | | ⅜ | 8 44 | |
| | Wheat, f. p. a. E. C | 1,507 | | 1¼ | 14 12 | |
| | Mdse | 5,000 | | 2½ | 93 75 | |
| | do | 5,0 0 | | " | 93 75 | |
| | do | 9,506 | | ⅜ | 26 74 | |
| | do | 5,000 | | 2½ | 93 75 | |
| | Wheat, f. p. a. E. C | 2,500 | | 1½ | 30 | |
| | Mdse., do | 5,000 | | ½ | 18 75 | |
| | Grain, do | 10,000 | | 1 | 75 | |
| | Wheat, do | 6,000 | | 1¼ | 56 25 | |
| | do. do | 9,154 | | " | 91 54 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 268—676 | Sept. 20 | Rus. bk. Impi | Philada | U. K., &c. |
| " 678 | " " | S. S. Silverdale | N. Orleans | Bordeaux |
| " 679½ | " 22 | Bk. G. H. Gordon | Barbadoes | St. Johns, N. B. |
| " 680 | " " | S. S. Crest | Philada | Rio de Janeiro |
| " 681 | " " | " Renfrew | Balto | Calais, Fr. |
| " 683 | " " | " Mississippi | Montreal | L'pool |
| " 686 | " 23 | Bk. Budtistikken | Jamaica | Montreal |
| " " | " 28 | " " | do | do |
| 94 | | | | |
| | 1882. | | | |
| 268—687 | Sept. 25 | S. S. Kansas | Boston | L'pool |
| " 688½ | " 28 | " Hudson | Balto | Havre |
| " 689 | " " | " Bellingham | do | Dunkirk |
| " 692 | " 29 | Bk. Wm. Phillips | N. York | Vera Cruz |
| " 678½ | " " | S. S. Silverdale | N. Orleans via Sydney | Bordeaux |
| 268—693 | Oct. 2 | S. S. Valetta | Philada | Cork, &c. |
| " 694 | " " | " Samaria | Boston | L'pool |
| " 695 | " 3 | " Ontario | Montreal | do |
| " 696 | " " | " Sarnia | do | do |
| " 697 | " " | " Lake Huron | do | do |
| " 700 | " 4 | Ship Walter D. Wallett | Rotterdam | Montreal |
| " 701 | " " | Bk. Fortunato Repetto | Philada | Antwerp |
| " 702 | " " | S. S. Guildford | N. Orleans | Bordeaux |
| " 703 | " 6 | Bg. Nautilus | Barbadoes | Montreal |
| " 704 | " 7 | S. S. Somerset | Montreal | Bristol |
| " 712 | " 9 | Schr. Fred. J. Collins | Galveston | Vera Cruz |
| " 720 | " 16 | Bk. Pontida | Philada | U. K. or Cont., &c. |
| 96 | | | | |
| | 1882. | | | |
| 268—721 | Oct. 16 | Ship Nuncio | Phila | Antwerp |
| " 722 | " " | S. S. Ganges or other str | Patras & Denia | Philada |
| " 723 | " 17 | " Nurnberg | N. York | Plymouth |
| " 724 | " 18 | " Lake Winnepeg | Montreal | L'pool |
| " 730 | " " | " Illyrian | Boston | do |
| " 732 | " 21 | Bk. Fannie L. Cann | Philada | Dublin |
| 268—748 | Nov. 2 | S. S. Mosser | China via Suez | N. York |
| " 755 | " 7 | " Lake Manitoba | Montreal | L'pool |
| " 756 | " 8 | " Lizzie English | Mediterranean, &c | Montreal |
| " 757 | " " | " Avlona | do | do |
| " 758 | " " | " Barcelona | do | do |
| " 764 | " 10 | Bk. Nellie Brett | N. York | Vera Cruz |
| " 765 | " 11 | " Usko | Balto | Belfast |
| " 787 | " 21 | " Deodarus | Charente | Montreal |
| " 788 | " " | S. S. Gracia | Havana | do |
| " 803 | " 29 | " Sarnia | Montreal | L'pool |
| " 804 | " " | " Bristol | do | Bristol |
| 98 | | | | |
| | 1882. | | | |
| 268—805 | Nov. 29 | S. S. Ontario | Montreal | L'pool |
| " 806 | " " | " Parisian | do | do |
| " 807 | " " | " Peruvian | do | do |
| 268—819 | Dec. 7 | S. S. Friary | Savannah | Reval |
| " 824 | " 13 | Bk Nuovo Nicolo | N. York | Valparaiso |
| " 833 | " 18 | Bk. S. J. Bogart | Philada | Cork |
| " 834 | " 20 | S. S. S. George | Balto | |
| " 843 | " 26 | Bk. Caterina Pietra | Philada | Q. F. P., f. o. U. K. or Cont., &c. |
| " 844 | " 27 | S. S. Lena | New Orl's | U. K. or Cont., &c. |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Wheat, f. p. a. E. C | 3,563 | | 1¾ | 46 76 | |
| ....do. do | 10,000 | | 1⅞ | 140 63 | |
| Mdse | 5,000 | | 2 | 75 | |
| Flour, as per application | 2,693 | | ¾ | 15 14 | |
| Wheat | 10,000 | | 1¼ | 93 75 | |
| Mdse | 5,000 | | ½ | 18 75 | |
| ....do | 5,000 | | 2 | 75 | |
| ....do. ½ % | " | | ½ | 18 75 | |
| Forward | | | | 1,142 12 | |
| 95 Amounts brought forward | | | | 1,142 12 | |
| Mdse | 10,000 | | ¾ | 28 13 | |
| Grain, f. p. a. E. C | 2,200 | | 1½ | 24 75 | |
| ....do | 5,490 | | 1½ | 56 62 | |
| Mdse., f. p. a. E. C | 9,704 | | 1½ | 109 17 | |
| | 296 | | 4½ | 10 | |
| Additional prem | 10,000 | | ¾ | 18 75 | |
| | | | | 1,389 54 | |
| Grain, 20 % average | 10,000 | | 2¼ | 180 | |
| Mdse | 10,000 | | ⅝ | 46 87 | |
| ....do | 5,000 | | ½ | 18 75 | |
| ....do | 5,000 | | " | 18 75 | |
| ....do | 5,000 | | " | 18 75 | |
| ....do | 5,000 | | 2½ | 93 75 | |
| Wheat, f. p. a. E. C | 8,000 | | 2 | 128 | |
| Grain, do. priv. coal ports | 10,000 | | 2½ | 187 50 | |
| Mdse | 5,000 | | " | 93 75 | |
| Cheese | 5,000 | | ⅞ | 32 81 | |
| Cotton | 10,000 | | 1 | 75 | |
| Wheat, f p. a. E. C | 5,000 | | 2¼ | 84 37 | |
| Forward | | | | 978 30 | |
| 97 Amounts brought forward | | | | 978 30 | |
| Grain, f. p. a. E. C | 5,000 | | 2¼ | 110 | |
| Mdse | 10,000 | | 1 | 80 | |
| ....do | 500 | | ¾ | 1 41 | |
| ....do | 5,000 | | ⅝ | 23 44 | |
| ....do | 10,000 | | ⅜ | 28 13 | |
| Wheat, subject to 20 % average | 10,000 | | 3½ | 280 | |
| | | | | 1,501 28 | |
| Mdse | 10,000 | | 2¼ | 168 75 | |
| ....do | 5,000 | | ⅞ | 32 81 | |
| Priv. of H'fax, mdse | 5,000 | | 1.69 | 63 37 | |
| ....do. do | 5,000 | | 1.80 | 67 50 | |
| Mdse | 5,000 | | 1.65 | 61 88 | |
| ....do., f. p. a. E. C | 5,000 | | 1½ | 56 25 | |
| Wheat, do | 5,000 | | 2¾ | 103 12 | |
| Mdse | 5,000 | | 3¼ | 121 87 | |
| ....do | 5,000 | | 2 | 75 | |
| ....do | 5,000 | | 1 | 37 50 | |
| ....do | 5,000 | | 2 | 75 | |
| Forward | | | | 863 05 | |
| 99 Amounts brought forward | | | | 863 05 | |
| Mdse | 5,000 | | 1¼ | 46 88 | |
| Mdse | 5,000 | | 1 | 37 50 | |
| ....do | 5,000 | | 1½ | 56 25 | |
| | | | | 1,003 68 | |
| Cotton | 5,000 | | 3½ | 166 25 | |
| Mdse | 3,080 | | 2½ | 57 75 | |
| Grain, f. p. a. E. C | 10,000 | | 3⅛ | 260 | |
| ....do. do | 10,000 | | 2¼ | 168 75 | |
| ....do. do | 7,500 | | 3 | 180 00 | |
| ....do. do | 5,000 | | 2½ | 93 75 | |
| Forward | | | | 926 50 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 100 | 1883. | | | |
| 268—846 | Jan'y 2 | Bk. Kedron | Balto | St. Nazaire |
| 863 | " 6 | " Ocean | Trieste | N. York |
| 868 | " 11 | Bg. Ortolan | Havana | Philada |
| 878 | " 19 | Bktn. Jennie Sweeney | Galveston | do |
| 881 | " 25 | S. S. Tangier | Philada | Limerick |
| 882 | " " | " Hasland | do | do |
| 883 | " 26 | Bk. A. Gondy | do | Cork |
| 884 | " 31 | S. S. Bellini | Balto | Bordeaux |
| 893 | Feb'y 2 | Bk. Chieftain | Philada | Cork |
| 894 | " 5 | S. S. Romanby | Balto | Bordeaux |
| 895 | " 8 | " Hart | Philada | U. K. or Cont., &c |
| 896 | " 12 | Br. bk. Guiana | Balto | Antwerp |
| 904 | " 19 | " Peruana | Demerara | Boston |
| 905 | " 20 | S. S. Zealous | Philada | U. K., &c. |
| 910 | " 23 | Bk. Peruana | Demerara | Boston |
| 913 | " 28 | S. S. Tarpeia | Philada | Limerick |
| 102 | 1883. | | | |
| 268—922 | M'ch 2 | S. S. Ben Voirlich | Philada | Q. F. P., f. o., &c |
| 923 | " 3 | Bg. Orne | N. York | Stockholm |
| 926 | " 7 | Bk. Russell | Galveston | L'pool |
| 926½ | " 8 | S. S. Richmond | Philada | U. K. or Cont., &c |
| 932 | " 16 | " Bothal | Balto | Bordeaux |
| 938 | " 21 | " Britannia | Philada | Dublin |
| 952 | " 30 | Ship Nuncio | do | Belfast |
| 972 | Apr. 12 | Bk. Nicosia | Philada | Belfast |
| 976 | " 19 | Bg. Mary Louisa | Demerara | Boston |
| 986 | " 27 | Ger. bk. Adele | Island of Java | Montreal |
| 987 | " " | Br. ship Hallgerda | Formosa | do |
| 988 | " " | Bk. Birmah | Manila | do |
| 989 | " " | " B. F. Watson | do | Sandy Hook, f. o., &c. |
| 990 | " " | Br. bk. Bolivia | Rotterdam | Quebec & for Montreal. |
| 991 | " " | " Echo | Jamaica | Montreal |
| 992 | " " | Nor. " August Loeffler | Porto Rico | do |
| 1002 | " 28 | Am. " Escort | Formosa | do |
| 1003 | " " | S. S. Oranmore | Balto | L'pool |
| 1004 | " " | " Wordsworth | Philada | Cork |
| 104 | 1883. | | | |
| 268—1005 | Apr. 30 | S. S. Belgenland | N. York | Antwerp |
| 1007 | May 2 | S. S. Emmy Hause | Philada | Limerick |
| 1008 | " 5 | " Pennland | N. York | Antwerp |
| 1018 | " 11 | Bk. Lorna Doone | Jamaica | Montreal |
| 1030 | " 15 | S. S. Avlona | Mediterranean ports | Canada |
| 1031 | " " | Br. Bk. Lake Simcoe | Charente | Montreal |
| 1033 | " 18 | S. S. Scotts Greys | Philada | Belfast |
| 1042 | " 24 | Bk. Sunbeam | do | Li-bon |
| 1043 | " 28 | S. S. Amoor | do | Galway |
| 1051 | " 31 | " Zeeland | do | Antwerp |
| 1052 | " " | " Vaderland | do | do. |
| 1058 | June 5 | Bk. Ankather | Wilmington | L'pool |
| 1059 | " 7 | S. S. Mayumba | Philada | Bordeaux |
| 1060 | " 11 | " Amaryllis | do | Sharpness |
| 1075 | " 16 | Bk. Teviot | Jamaica | Montreal |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount, insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| 101 | Grain, f. p. a. E. C. | 5,000 | | 3¼ | 121 88 | |
| | Mdse. | 5,000 | | 5 | 187 50 | |
| | Mdse. | 2,500 | | 1½ | 28 12 | |
| | Cotton | 5,000 | | 1⅛ | 45 | |
| | Grain, f. p. a. E. C. | 9,500 | | 2 | 152 | |
| | ....do. do. | 7,500 | | " | 120 | |
| | ....do. do. | 5,000 | | 3¼ | 130 | |
| | ....do. do. | 6,000 | | 2 | 90 | |
| | | | | | 874 50 | |
| | Grain, f. p. a. E. C. | 2,950 | | 3¼ | 76 70 | |
| | ....do. do. | 5,400 | | 2 | 81 | |
| | Corn, do. | 5,0 0 | | " | 80 | |
| | Grain, do. | 5,000 | | 3¼ | 121 87 | |
| | Sugar | 5,000 | | 1¾ | 65 63 | |
| | Grain, f. p. a. E. C. | 5,000 | | 2 | 80 | |
| | Sugar | 2,430 | | 1¾ | 31 90 | |
| | Grain, f. p. a. E. C. | 10,000 | | " | 140 | |
| | | | | | 677 10 | |
| 103 | Grain, f. p. a. E. C. | 10,000 | | 1¾ | 140 | |
| | Mdse. | 7,500 | | 2 | 112 50 | |
| | Cotton excepted from op. pol. | 10,000 | | ⅝ | 62 50 | Net. |
| | Grain, f. p. a. E. C. | 10,000 | | 1⅝ | 130 | |
| | ....do. do. | 10,000 | | 1 | 75 | |
| | ....do. do. | 5,000 | | " | 40 | |
| | ....do. do. | 5,000 | | 1¾ | 70 | |
| | | | | | 630 | |
| | Grain, f. p. a. E. C. | 4,100 | | 1¾ | 57 40 | |
| | Mdse. | 924 | | 2 | 13 86 | |
| | ....do. | 5,000 | | 4 | 150 | |
| | ....do. | 5,000 | | 5 | 187 50 | |
| | ....do. | 5,000 | | 4½ | 168 75 | |
| | ....do. | 5,000 | | 4 | 150 | |
| | Gin | 5,000 | | 2½ | 93 75 | |
| | Sugar | 5,000 | | 3 | 112 50 | |
| | ....do. | 5,000 | | 2½ | 93 75 | |
| | ....do. | 5,000 | | 4½ | 168 75 | |
| | Grain, f. p. a. E. C. | 7,000 | | ⅜ | 19 69 | |
| | ... do. do. | 5,000 | | ¾ | 30 | |
| | Forward | | | | 1,245 95 | |
| 105 | Amounts brought forward | | | | 1,245 95 | |
| | Mdse. | 10,000 | | ⅜ | 28 13 | |
| | | | | | 1,274 08 | |
| | Grain, f. p. a. E. C., incl'd'g lighterage | 4,600 | | ⅝ | 27 60 | |
| | Mdse. | 9,885 | | ⅜ | 27 80 | |
| | ....do. | 5,000 | | 2½ | 93 75 | |
| | ....do. | 5,000 | | 1.58 | 59 25 | |
| | ....do. | 5,000 | | 2¼ | 84 38 | |
| | Flour subject to p. a. to $75 | 7,885 | | 1 | 59 14 | |
| | Grain in bags, f. p. a. E. C., lighterage | 5,000 | | ⅞ | 35 | |
| | Grain, do. do. | 5,000 | | ¾ | 30 | |
| | ....do. do. | 10,000 | | ¾ | 30 | |
| | Mdse. | 3,623 | | ½ | 14 49 | |
| | | | | | 461 41 | |
| | Cotton | 8,703 | | ¾ | 62 01 | |
| | Grain, f. p. a. E. C. | 3,877 | | 1 | 31 02 | |
| | ....do. do. | 5,000 | | ¾ | 28 13 | |
| | Sugar | 5,000 | | 3 | 112 50 | |
| | Forward | | | | 233 66 | |

*Exhibit A—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 106 | 1883. | | | |
| 268—1084 | June 25 | S. S. Efficient | Philada | Belfast |
| 1098 | July 6 | S. S. Pennland | N. York | Antwerp |
| 1099 | " " | " Belgenland | do | do. |
| 1100 | " 10 | Ship Gen'l McClellan | San Francisco | N. York or Boston |
| 1116 | " 25 | Bk. Hero | Jamaica | Montreal |
| 1117 | " 27 | S. S. Barcelona | Mediterranean ports | Canada |
| 1133 | Aug. 18 | Bk. Halcyon | Philada | Lisbon |
| 1134 | " 20 | S. S. Bellamara | do. | Antwerp |
| 1138 | " 29 | " Hanogate | do. | Bordeaux |
| 1148 | Sept. 3 | Bkt. Freidig | Sagua | London |
| 1149 | " 5 | S. S. Waesland | N. York | Antwerp |
| 1150 | " " | " Andrean | Balto | L'pool |
| 1151 | " " | " Zeeland | Philada | Antwerp |
| 108 | 1883. | | | |
| 268—1159 | Sept. 22 | S. S. Mentmore | Baltimore | L'pool |
| 1160 | " 25 | " Zeeland | Philada | Antwerp |
| 1161 | " 27 | " Oranmore | Balto | L'pool |
| 1162 | " " | Ship Rossignol | N. York | do. or Birkenhead |
| 1181 | Oct. 18 | Bk. Sillo | Philada | U. K. or Cont, &c |
| 1182 | " " | " Baccicecia | Newport News | do |
| 1186 | " 23 | " Etimologia | Philada | do |
| 1191 | Nov. 3 | S. S. Edwin | Philada | Ipswich |
| 1204 | " 12 | " Monkseaton | Balto | Waterford |
| 1205 | " 15 | Bg. E. F. Campbell | Maranham | N. York |
| 1206 | " 16 | Schr. Georgia Sheppard | Brunswick, Ga | Boston |
| 1215 | " 19 | S. S. Vidette | do | do |
| 1216 | " 30 | Bk. (G.) Rensens | New York | W. Coast of Mexico, |
| 1217 | " 20 | Ship T. F. Oakes | do. or Philada | Tacoma, Wash. Ter. |
| 1218 | " 22 | Bk. Padre | Philada | Gloucester |
| 1219 | " 23 | S. S. Menythorpe | Hamburg, &c | Philada. |
| 110 | 1883. | | | |
| 268—1243 | Dec. 15 | Ship Lord Wolseley | Philada | Belfast |

I hereby certify that I have personally examined and compared the within statements marked "E. S. H., Exhibit A, 10, 21, '84," and that they are in all respects a true and exact copy of the original endorsements under the policies described in the original instruments.

Witness my hand and notarial seal this 21st day of October, 1884.

[SEAL.] (Signed) EDWARD S. HARLAN,
*Notary Public.*

*Affidavit.*

STATE OF PENNSYLVANIA, } ss:
*County of Philadelphia,* }

I, William B. Mann, prothonotary of the court of common pleas of said county, do certify that Edward S. Harlan, Esquire, before whom the annexed certificate was made, was at the time of so doing a notary public in and for the county and State

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| 107 | Amounts brought forward | | | | 233 66 | |
| | Flour subject to 5% average | 4,180 | | ¾ | 23 51 | |
| | | | | | 257 17 | |
| | Mdse | 8,169 | | ¾ | 22 97 | |
| | ....do | 6,576 | | " | 18 50 | |
| | Wool | 10,000 | | 2¾ | 206 25 | |
| | Mdse | 5,000 | | 2 | 75 | |
| | ....do | 5,000 | | 1.32 | 49 50 | |
| | | | | | 372 22 | |
| | Grain, f. p. a. E. C | 2,300 | | 1 | 18 40 | |
| | ....do. do. | 4,667 | | ¾ net | 35 | |
| | Wheat, do | 5,000 | | 1.5 | 35 63 | |
| | | | | | 89 03 | |
| | Sugar, 7% ave. each 100 hhds | 5,000 | | ½ | 60 | |
| | Grain, f. p. a. E. C | 5,000 | | ⅞ | 14 06 | |
| | Cotton excepted from open pol | 5,000 | | net ¾ | 12 50 | |
| | Grain, f. p. a. E. C | 4,118 | | ⅞ | 12 35 | |
| | Forward | | | | 98 91 | |
| 109 | Amounts brought forward | | | | 98 91 | |
| | Grain, f. p. a. E. C | 5,000 | | ⅞ | 14 06 | |
| | Mdse., do | 5,000 | | " | 14 06 | |
| | Grain, do | 5,000 | | ½ | 18 75 | |
| | Petroleum | 5,000 | | 1¼ | 46 87 | |
| | | | | | 192 65 | |
| | Wheat | 5,000 | | 2¾ | 103 12 | |
| | ....do | 5,000 | | 2½ | 93 75 | |
| | ....do., f. p. a. E. C | 5,000 | | 2¾ | 103 12 | |
| | | | | | 299 99 | |
| | Corn, f. p. a. E. C | 5,000 | | 1.30 net | 65 | |
| | Wheat, do | 5,000 | | 1.30-10 | 58 50 | |
| | Mdse | 5,000 | | 2½ | 100 | |
| | Cotton | 5,000 | | ⅛ | 23 44 | |
| | ....do | 5,000 | | ¼-5 | 11 88 | |
| | Mdse | 5,000 | | 2½ | 93 75 | |
| | Rails, &c | 5,000 | | 4½ | 168 75 | |
| | Wheat, f. p. a. E. C | 5,000 | | 3 | 112 50 | |
| | Sugar | 5,000 | | ¾ | 28 13 | |
| | | | | | 661 95 | |
| 111 | Mdse | 5,000 | | 1 | 37 50 | |

aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with the handwriting of said Edward S. Harlan and verily believe his signature thereto is genuine, and that said certificate purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of Oct., in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] (Signed) WILLIAM B. MANN,
*Prothonotary.*

112 & 113

EXHIBIT B.

U. S. C.

"EXHIBIT B." Filed with

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 114 | 1882. | | | |
| 277—349 | M'ch 1 | S. S. Caracas | La Guayra, &c. | N. York |
| " 352 | " " | " Balcarres | do. | do. |
| " 373 | " 13 | " Claudius | do. | do. |
| " 385 | " 30 | " Caracas | do. | do. |
| 277—442 | May 3 | S. S. Claudius | La Guayra, &c. | N. York |
| " 443 | " " | " Caracas | do. | do. |
| | 1883. | | | |
| 277—1006 | April 30 | S. S. Valencia | La Guayra, &c. | N. York |
| 277—1233 | Dec. 6 | S. S. Valencia | La Guayra, &c. | N. York |
| 1234 | " " | " Caracas | do. | do. |

I hereby certify that I have personally examined and compared the foregoing statements marked "Exhibit B, E. S. H., 10, 21, '84," and that they are in all respects a true and exact copy of the original endorsements under the policies described in the original instruments.

Witness my hand and notarial seal this 21st day of October, 1884.

[SEAL.] (Signed) EDWARD S. HARLAN,

*Notary Public.*

E. S. H. 10, 21, '84.

C. 10647.

Answer November 29th, 1884.

| Risk. | Amount gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| 115 | | | | | |
| Mdse. | 10,000 | | ¾ | 56 25 | |
| .....do | 10,000 | | " | 56 25 | |
| .....do | 10,000 | | " | 56 25 | |
| .....do | 10,000 | | " | 56 25 | |
| | | | | 225 | |
| Mdse. | 3,051 | | ¾ | 17 16 | |
| .....do | 10,000 | | " | 56 25 | |
| | | | | 73 41 | |
| Mdse. | 2,763 | | ¾ | 15 54 | |
| Mdse. | 2,986 | | ¾ | 16 80 | |
| .....do | 5,000 | | " | 28 12 | |
| | | | | 44 92 | |

116 *Affidavit.*

STATE OF PENNSYLVANIA, } ss:
*County of Philadelphia,* }

I, William B. Mann, prothonotary of the court of common pleas of said county, do certify that Edward S. Harlan, Esquire, before whom the annexed certificate was made, was at the time of so doing a notary public in and for the county and State aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with the handwriting of the said Edward S. Harlan and verily believe his signature thereto is genuine, and that said certificate purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of Oct., in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] (Signed) WILLIAM B. MANN,
*Prothonotary.*

117 & 118

EXHIBIT C.

U. S. C.

"EXHIBIT C." Filed with

*Hibernia Insurance Co. of N. O.*,

119

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 296—272 | Nov. 28 | Ship Mindora | Philippines | New York or Boston |
| 296—288 | Dec. 21 | Ship Antelope | Manila | New York |
| | 1882. | | | |
| 286—304 | Jan'y 9 | S. S. Navarino & spt | Madras via England | Boston |
| " 308 | " 19 | Ship Beaconsfield | Calcutta | do |
| " 320 | " 26 | " Luzon | Manila | New York or Boston |
| " " | " " | " do | do | do |
| " 321 | " 27 | " Capernicus | do | N. York |
| " 326 | " 31 | Bk. Elmiranda | Padang | do |
| 296—330 | Feb'y 6 | Bk. Cheshire | Manila | N. York or Boston |
| " 340 | " 14 | Ship Atlantic | Java | do |
| " 341 | " 18 | " Senator | Calcutta | do |
| " 342 | " " | " Alex. McNeill | Padang | do |
| " 343 | " " | " Glenmoray | Calcutta | do |

121

| | | | | |
|---|---|---|---|---|
| | 1882. | | | |
| 296—382 | M'ch 23 | S. S. Eldorado & S. S. | Calcutta via England | Boston |
| 296—397 | Apr. 8 | Ship Panay | Philippine Islands | N. York or Boston |
| " 439 | " 29 | Bk. Berwick Law | Calcutta | N. York |
| 296—453 | May 9 | Ship Belle Morse | Manila | U. S. |
| " 474 | " 17 | Bk. Stillman B. Allen | Padang | N. York |
| 296—466 | May 13 | Ship Matchless | Singapore | N. York |
| 296—521 | June 9 | Bk. Willard Mudgett | Iloilo | Boston |
| " 522 | " " | " Brazos | do | do |
| " 523 | " " | " Glimpt | Padang | N. York |
| " 559 | " 28 | Ship Margaretha | Iloilo & for Manila | Boston |
| " 560 | " " | " do | do | do |

123

| | | | | |
|---|---|---|---|---|
| | 1881. | | | |
| 296—554 | June 29 | S. S. Leading Wind | Iloilo | Boston |
| " 565 | " 30 | Ship Cashmere | Manila | do |
| 296—570 | July 1 | S. S. Glenavon | China | U. S. |
| " 603 | " 25 | " Dacca & stmr | Calcutta, &c | Boston via England |
| " 607 | " 26 | Bk. Chestina Redman | Iloilo | N. York or Boston |
| " 608 | " " | " Tillie Baker | do | do |
| " 609 | " " | " Kentish Tar | Padang | N. York |
| " 610 | " " | Ship Mystic Belle | Iloilo | Boston |
| " 611 | " " | " Sacramento | do | N. York or Boston |
| " 594 | " 18 | Bk. Elizabeth | Manila | do |
| 296—670 | Sept. 12 | Bk. Eliza | Iloilo | Boston |
| " 691 | " 28 | Ship Galetia | Cebu | N. York or Boston |

E. S. H. 10, 21, '84.

C. 10647.

Answer November 29th, 1884.

*East India Pol. No.* 296.

| 120 Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 10,000 | | 1⅛ | 187 50 | |
| Cargo | 5,000 | | 2 | 75 | |
| Mdse | 3,366 | | 2⅛ | 56 80 | |
| ....do | 10,000 | | 2⅜ | 187 50 | |
| Hemp | 5,000 | | 2 | 75 | |
| Sugar | 5,000 | | 4 | 150 | |
| Cargo | 5,000 | | 2¼ | 84 38 | |
| Mdse | 10,000 | | 2 | 150 | |
| | | | | 703 68 | |
| Mdse | 10,000 | | 2⅛ | 187 50 | |
| ....do | 10,000 | | 3½ | 262 50 | |
| ....do | 420 | | 2¼ | 7 09 | |
| ....do | 2,698 | | " | 45 53 | |
| ....do | 5,826 | | " | 98 31 | |
| | | | | 600 93 | |
| 122 Mdse | 3,374 | | 2 | 50 61 | |
| Mdse | 10,000 | | 2⅛ | 187 50 | |
| ....do | 9,794 | | 2¼ | 165 28 | |
| | | | | 352 78 | |
| Mdse | 10,000 | | 3¾ | 281 25 | |
| ....do | 5,523 | | 2⅜ | 103 56 | |
| Mdse | 10,000 | | 2 | 150 | |
| | | | | 534 81 | |
| Mdse | 10,000 | | 4 | 300 | |
| ....do | 10,000 | | " | 300 | |
| ....do | 10,000 | | 2½ | 187 50 | |
| Hemp | 5,000 | | 2⅛ | 79 69 | |
| Sugar | 5,000 | | 4⅛ | 168 75 | |
| Forward | | | | 1,035 94 | |
| 124 Amounts brought forward | | | | 1,035 94 | |
| Mdse | 10,000 | | 4 | 300 00 | |
| Mdse | 10,000 | | 4⅛ | 309 38 | |
| | | | | 1,645 32 | |
| Mdse, including war risks | 10,000 | | 2½ | 187 50 | |
| ....do | 10,000 | | 2 | 150 | |
| ....do | 5,309 | | 4 | 159 27 | |
| ....do | 4,466 | | " | 133 98 | |
| ....do | 8,591 | | 2⅛ | 161 08 | |
| ....do | 10,000 | | 4⅛ | 309 38 | |
| ....do | 10,000 | | 4⅜ | 328 12 | |
| ....do | 10,000 | | 4½ | 337 50 | |
| | | | | 1,766 83 | |
| Mdse | 10,000 | | 4⅛ | 309 38 | |
| ....do (to return ⅛ ⅌ if metalled since '80) | 10,000 | | 5½ | 412 50 | |
| | | | | 721 88 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 125 | 1881. | | | |
| 296—718 | Oct. 10 | S. S. Ghoorkha | Madras via England | N. York |
| " 728 | " 18 | Bk. Mary S. Read | Iloilo | Boston |
| " 729 | " " | Ship Jacob E. Ridgway | Manila | N. York |
| " 736 | " 21 | " Annie M. Small | do | do |
| " 738 | " 26 | Bk. George Watson | Padang | do |
| 296—746 | Nov. 1 | Ship Bencleuch | Calcutta | N. York |
| " 747 | " " | Bk. Lizzie H | Singapore | Boston |
| " 763 | " 8 | S. S. Dacca & Greece | Madras via England | do |
| " 790 | " 20 | " Merkara, &c | do | do |
| " 791 | " " | " Rewa, &c | do | do |
| " 800 | " 29 | Ship Looloo | | U. S. |
| " 801 | " " | " Dan'l I. Tenney | Philippine Islands | N. York |
| " 802 | " " | Bk. Argo | Manila, Singapore | Boston |
| 296—832 | Dec. 15 | S. S. Navarino & S. S. | Madras via England | Boston |
| " 842 | " 22 | Ship Viscount | Calcutta | N. York |
| 127 | 1883. | | | |
| 296—861 | Jan'y 3 | Bk. Papillon | Manila | Boston |
| 865 | " 6 | " Halia | Padang | N. York |
| 873 | " 13 | Ship Hercules | Iloilo | Boston |
| 891 | " 31 | S. S. India & S. S. | Madras via England | do |
| 892 | Feb'y 2 | Ship Blangowie | Calcutta | N. York |
| 900 | " 3 | " Glamorganshire | Philippine Isl'ds | U. S. |
| 901 | " " | Bk. Chas. R. Lewis | Java | do |
| 929 | M'ch 14 | Bk. Jas. Stafford | Manila | U. S. |
| 930 | " " | " Alice Reed | Singapore | Boston or New York |
| 931 | " " | " Artist | Calcutta | N. York |
| 939 | " 28 | Ship Nearchus | Manila | do |
| 940 | " " | " Southern Cross | Cebu | do |
| 941 | " " | " Hoogley | Singapore | Boston |
| 129 | 1883. | | | |
| 296—975 | Apr. 13 | Bk. Alexandra | Batavia & Padang | N. York |
| 985 | " 24 | " Eme | Iloilo | Boston |
| 1028 | May 12 | Ship Herschel | Iloilo | U. S. |
| 1065 | June 13 | Bk. Glide | Zanzibar | Boston |
| 1066 | " " | Ship Mindora | Philippines | U. S. |
| 1067 | " " | " Raphael | Manila | do |
| 1068 | " " | Bk. Douglas Campbell | do | do |
| 1069 | " " | " Aldebaran | Padang | N. York |
| 1070 | " " | " Henry James | Calcutta | U. S. |
| 1071 | " " | " Graville Belle | Iloilo | do |
| 1072 | " " | " Oasis | Singapore | N. York |
| 1073 | " " | Ship Sumner R. Mead | Iloilo | do |
| 1085 | " 26 | " Matchless | do | do. or Boston |
| 1094 | " 30 | " Belle of Bath | Manila | do |
| 1095 | " " | " Panay | Iloilo | Boston |
| 131 | 1883. | | | |
| 296—1096 | June 30 | Bk. Jonathan Bourne | Manila | Boston or N. York |
| 1097 | " " | " Agate | Singapore | do |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| 126 Mdse | 10,000 | | 2¼ | 168 75 | |
| ....do | 5,131 | | 4½ | 158 74 | |
| Mdse | 10,000 | | 4½ | 337 50 | |
| ....do | 10,000 | | 2⅞ | 230 | |
| ....do | 10,000 | | 3 | 225 | |
| | | | | 1,119 99 | |
| Mdse | 5,000 | | 2¼ | 84 38 | |
| ....do | 1,558 | | 2 | 23 37 | |
| ....do | 10,000 | | 2¼ | 168 75 | |
| ....do | 6,605 | | " | 111 46 | |
| ....do | 10,000 | | " | 168 75 | |
| ....do | 10,000 | | 2½ | 187 50 | |
| ....do | 290 | | 4½ | 9 79 | |
| ....do | 2,642 | | 1¾ | 34 67 | |
| | | | | 788 67 | |
| Mdse | 10,000 | | 2¼ | 168 75 | |
| ....do | 10,000 | | " | 168 75 | |
| | | | | 337 50 | |
| 128 Mdse | 2,226 | | 3⅛ | 58 43 | |
| ....do | 10,000 | | 2½ | 187 50 | |
| Mdse | 10,000 | | 4 | 300 | |
| ....do | 10,000 | | 2¼ | 168 75 | |
| | | | | 714 68 | |
| Mdse | 9,003 | | 2¼ | 151 92 | |
| ....do | 10,000 | | 2¾ | 281 25 | |
| ....do | 10,000 | | 2½ | 187 50 | |
| | | | | 620 67 | |
| Mdse | 10,000 | | 2½ | 187 50 | |
| ....do | 2,990 | | 1¾ | 39 24 | |
| ....do | 10,000 | | 2¼ | 168 75 | |
| ....do | 3,581 | | 2½ | 67 14 | |
| ....do | 340 | | " | 6 38 | |
| ....do | 10,000 | | 1⅞ | 140 62 | |
| | | | | 609 63 | |
| 130 Mdse | 10,000 | | 3 | 225 | |
| ....do | 10,000 | | 3¾ | 281 25 | |
| | | | | 506 25 | |
| Mdse | 5,626 | | 4¾ | 200 43 | |
| Mdse | 4,500 | | 1¾ | 59 06 | |
| ....do | 9,500 | | 3¾ | 231 56 | |
| ....do | 10,000 | | 3 | 225 | |
| ....do | 87 | | 4 | 2 61 | |
| ....do | 10,000 | | 3 | 225 | |
| ....do | 10,000 | | 2¼ | 168 75 | |
| ....do | 10,000 | | 4½ | 318 75 | |
| ....do | 5,643 | | 2 | 84 64 | |
| ....do | 3,691 | | 4½ | 124 57 | |
| ....do | 10,000 | | 4½ | 318 75 | |
| ....do | 10,000 | | 3¾ | 281 25 | |
| ....do | 10,000 | | 4 | 300 | |
| Forward | | | | 2,339 94 | |
| 132 Amounts brought forward | | | | 2,339 94 | |
| Mdse | 5,000 | | 3½ | 131 25 | |
| Mdse | 10,000 | | 1½ | 112 50 | |
| | | | | 2,583 69 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1883. | | | |
| 296—1115 | July 23 | S. S. Glenavon | China via Suez | N. York |
| 1122 | Aug. 8 | Bk. Harvard | Iloilo | Boston |
| 1123 | " " | " Wm. H. Besse | Manila | do |
| 1124 | " " | " J. H. Bowers | Batavia & Padang | N. York |
| 1125 | " " | " Kepler | Iloilo | U. S. |
| 1131 | " 15 | Ship Big Bonanza | Calcutta | N. York |
| 1132 | " 16 | " Leading Wind | Iloilo | Boston |
| 1142 | " 30 | Bk. Marie | Manila | N. York |
| 1143 | " 31 | Ship Sarah Hignett | Iloilo & Manila | do |
| 1170 | Oct. 9 | Ship Earl Granville | Iloilo | N. York or Boston |
| 1171 | " " | " Northern Light | Manila | do |
| 133 | | | | |
| | 1883. | | | |
| 1172 | Oct. 9 | Bk. Pilgrim | Manila | N. York or Boston |
| 1173 | " " | Ship City of Philada | do | do |
| 1196 | Nov. 6 | Bk. Batavia | Iloilo | Boston |
| 1197 | " " | Ship Importer | Manila | N. York |
| 1198 | " " | " Jacob E. Ridgway | do | Philada |
| 1199 | " " | Bk. Gerd Huje | Cebu | Boston |
| 1200 | " " | Ship Santa Clara | Manila | N. York |
| 1228 | Dec. 1 | Bk. Cheshire | Iloilo | Boston |
| 1229 | " " | " Ida | Manila | U. S. |
| 1230 | " " | " President Thiers | Mauritius | N. York |
| 1231 | " " | Ship Southern Cross | Manila via Hong Kong | U. S. |
| 1232 | " " | S. S. Galley of Lorne, &c. | Hong Kong | N. York |
| 135 | | | | |
| | 1884. | | | |
| 296—1252 | Jan. 31 | Ship Ardenclentha | Calcutta | N. York |
| 1253 | " " | Bk. H. G. Johnson | Iloilo | Boston |
| 1254 | " " | Ship Cypromene | Calcutta | N. York |
| 1255 | " " | Bk. Sokoto | Singapore | Boston |
| 1256 | " " | Ship Elizabeth Nicholson | Manila | do |
| 1256 | " " | " do. | do | do |
| 1257 | " " | Bk. Furness Abbey | Iloilo, Philip. Isl'ds. | do |
| 1258 | M'ch 10 | Ship Adm. M. Simpsona | Iloilo | N. York or Boston |
| 1259 | " 17 | " Sea Witch | Manila | do |
| 1260 | " " | " Mary L. Stone | Iloilo | do |
| 1261 | " " | Bk. Jno. D. Brewer | Padang | do |
| 1262 | " " | " Vilora H. Hopkins | do | do |
| 1263 | " " | " Bertrand | | do |
| 1264 | May 10 | S. S. Salembria | Manila via Hong Kong | N. York |

137 I hereby certify that I have personally examined and compared the foregoing statements marked "Exhibit C, E. S. H., 10, 21, '84," and that they are in all respects a true and exact copy of the original endorsements under the policies described in the original instruments.

Witness my hand & notarial seal this 21st day of October, 1884.

[SEAL.] (Signed) EDWARD S. HARLAN,
*Notary Public.*

*Affidavit.*

STATE OF PENNSYLVANIA, } ss:
*County of Philadelphia,* }

I, William B. Mann, prothonotary of the court of common pleas of said county, do certify that Edward S. Harlan, Esquire, before whom the annexed certificate was made, was at the time of so

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 5,000 | | 2¼ | 84 38 | |
| Mdse | 10,000 | | 4 | 300 | |
| ....do | 10,000 | | " | 300 | |
| ....do | 10,000 | | 2 | 150 | |
| ....do | 10,000 | | 2¾ | 281 25 | |
| Linseed, f. p. a. E. C | 5,000 | | 2¼ | 84 38 | |
| Mdse | 10,000 | | 4 | 300 | |
| ....do | 3,151 | | 4½ | 106 35 | |
| ....do | 5,000 | | " | 168 75 | |
| | | | | 1,690 73 | |
| Mdse | 5,000 | | 4¼ | 159 38 | |
| ....do | 10,000 | | 4½ | 337 50 | |
| Forward | | | | 496 88 | |
| 134 Amounts brought forward | | | | 496 88 | |
| Mdse | 5,000 | | 4 | 150 | |
| ....do | 5,000 | | 3¼ | 121 88 | |
| | | | | 768 76 | |
| Mdse | 9,048 | | 3¾ | 254 48 | |
| ....do | 10,000 | | 3½ | 262 50 | |
| ....do | 5,000 | | 4 | 150 | |
| ....do | 147 | | 3¾ | 4 13 | |
| ....do | 850 | | 4½ | 28 69 | |
| | | | | 699 80 | |
| Mdse | 5,000 | | 3¾ | 140 63 | |
| ....do | 5,000 | | 2.40 | 90 | |
| ....do | 1,210 | | 3½ | 29 40 | |
| ....do | 5,000 | | 2¼ | 84 38 | |
| ....do | 5,000 | | 2 | 75 | |
| | | | | 419 41 | |
| 136 Mdse | 8,600 | | 2¼ | 145 12 | |
| ....do | 5,000 | | 4 | 150 | |
| Mdse | 5,000 | | 2¼ | 84 37 | |
| ....do | 5,000 | | " | 84 37 | |
| Hemp | 1,435 | | 3 | 32 29 | |
| Sugar | 3,565 | | 4½ | 120 32 | |
| Mdse | 5,000 | | 4¼ | 159 37 | |
| | | | | 775 84 | |
| Mdse | 5,000 | | 4⅞ | 182 81 | |
| ....do | 5,000 | | 2 | 75 | |
| ....do | 5,000 | | " | 75 | |
| ....do | 5,000 | | 4 | 150 | |
| ....do | 5,000 | | 2 | 75 | |
| ....do | 5,000 | | " | 75 | |
| | | | | 632 81 | |
| Mdse | 5,000 | | 2 | 75 | |

doing a notary public in and for the county and State aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with the handwriting of the said Edward S. Harlan and verily believe his signature thereto is genuine, and that said certificate purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of Oct., in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] (Signed) WILLIAM B. MANN,
*Prothonotary.*

*Exhibit C—*

138 Hibernia Insurance Co.

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1881. | | | |
| 297—273 | Nov. 29 | Bk. Venus | Havana | Boston |
| " 274 | Dec. 2 | Bk. Venus | Havana | Boston |
| " 276 | " " | Schr. E. S. Newman | do | N. York |
| " 285 | " 21 | Bk. Emilie | do | do |
| " 286 | " " | " Chas. Fobes | do | do |
| " 287 | " " | " Ariadne | do | do |
| " 291 | " " | " Antonio Sala | do | do |
| " 295 | " 24 | S. S. Newport | do | do |
| " 298 | " 28 | " City of Mexico | do | do |
| " 299 | " " | " Saratoga | do | do |
| | 1882. | | | |
| 297—305 | Jan'y 13 | Bg. Antelope | Matanzas | Philada |
| " 312 | " 21 | Schr. Jno. B. Hamel, Jr. | Havana | do |
| " 313 | " " | Bk. Lucile | Matanzas | do |
| " 314 | " " | " Antonio Sala | Havana | N. York |
| 140 | | | | |
| | 1882. | | | |
| 297—328 | Feb'y 6 | S. S. Br. Empire | Havana | N. York |
| " 329 | " " | Bg. Henry B. Clews | Cardenas | Boston |
| " 331 | " 7 | Schr. Kensett | Sagua | Philada. |
| " 332 | " " | S. S. Marcia | Havana | N. York |
| " 334 | " 8 | " Lady Frances | Sagua | Boston |
| " 335 | " " | " Earl of Lonsdale | Matanzas | do |
| " 337 | " 13 | " Marcia | Havana | Philada |
| " 345 | " 24 | " City of Washington | do | N. York |
| " 346 | " " | " City of Puebla | do | do |
| " 347 | " " | " Cassius | Matanzas | do |
| 297—350 | M'ch 1 | Bk. Maggie Horton | Havana | N. York |
| " 351 | " " | S. S. Santiago | Cienfuego- | do |
| " 354 | " 3 | Brig Oliver Cutts | Sagua la Grande | Philada. |
| " 355 | " " | S. S. Amethyst | Cardenas | Boston |
| " 361 | " 8 | Bk. Hafrsfjord | Havana | do |
| " 362 | " " | S. S. Carondelet | Matanzas | N. York |
| " 363 | " " | " North Britain | do | Philada |
| 142 | | | | |
| | 1882. | | | |
| 297—364 | M'ch 10 | S. S. Compton | Cardenas | Philada. |
| " 365 | " " | " Castlefield | Matanzas via Boston | N. York |
| " 366 | " " | Bk. Atram Young | Cardenas via Matanzas | Philada. |
| " 367 | " " | " do | Matanzas | do |
| " 368 | " " | Schr. Joseph W. Foster | Havana | N. York |
| " 369 | " " | S. S. Earl of Lonsdale | Cardenas | Boston |
| " 375 | " 14 | Schr. A. E. McDonald | Havana | N. York |
| " 380 | " 21 | S. S. Lady Frances | Cardenas | Philada |
| 297—386 | Apr. 1-4 | Schr. Ellen McGolden | Matanzas | Boston |
| " 387 | " " | " do | Havana via Matanzas | do |
| " 388 | " " | " Belle Hooper | Sagua & Havana | N. York |
| " 389 | " " | Bk. Alice | Cardenas | Del. B'water, f. o. |
| " 390 | " " | Schr. Grace Bradley | do | do |
| " 391 | " " | S. S. Santiago | Cienfuegos | N. York |
| " 392 | " " | " Carondelet | Matanzas | do |
| " 394 | " 6 | Bk. Sichem | do | do |
| 144 | | | | |
| | 1882. | | | |
| 297—395 | Apr. 6 | Bk. Canning | Matanzas | Hampton Roads, f. o., &c. |
| " 396 | " " | S. S. North Cambria | do | Del. B'water, f. o. |
| " 402 | " 11 | " Earl of Lonsdale | Cardenas | Boston |
| " 403 | " " | " Compton | do | Philada |

Continued.

139 West India Pol. No. 297.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Sugar | 10,000 | | 1 | 75 | |
| Sugar, add'l prem | 10,000 | | 1/4 | 18 75 | |
| Mdse | 1,130 | | 1 | 8 47 | |
| ....do | 4,172 | | " | 31 29 | |
| ....do | 567 | | " | 4 25 | |
| ....do | 1,350 | | " | 10 13 | |
| ....do | 3,546 | | " | 26 60 | |
| ....do | 10,000 | | 5/8 | 46 88 | |
| ....do | 1,945 | | " | 9 11 | |
| ....do | 10,000 | | " | 46 88 | |
| | | | | 202 36 | |
| Sugar | 10,000 | | 1 | 80 | |
| Mdse | 1,950 | | " | 14 63 | |
| ....do | 3,600 | | " | 27 | |
| ....do | 3,488 | | " | 26 18 | |
| | | | | 147 81 | |
| 141 Mdse | 10,000 | | 5/8 | 46 88 | |
| ....do | 158 | | 1 1/4 | 1 48 | |
| Mdse | 1,054 | | " | 9 89 | |
| ....do | 10,000 | | 5/8 | 46 88 | |
| ....do | 10,000 | | " | 46 88 | |
| ....do | 10,000 | | " | 46 88 | |
| Sugar | 10,000 | | " | 50 | |
| Mdse | 7,526 | | " | 35 28 | |
| ....do | 966 | | " | 4 54 | |
| ....do | 10,000 | | " | 46 88 | |
| | | | | 335 59 | |
| Mdse | 2,810 | | 1 | 21 07 | |
| ....do | 5,130 | | 7/8 | 33 67 | |
| Molasses | 5,000 | | 1 1/2 | 56 25 | |
| Mdse | 10,000 | | 5/8 | 46 88 | |
| ....do | 562 | | 1 | 4 20 | |
| ....do | 9,112 | | 5/8 | 42 71 | |
| ....do | 10,000 | | " | 46 87 | |
| Forward | | | | 251 65 | |
| 143 Amounts brought forward | | | | 251 65 | |
| Mdse | 10,000 | | 5/8 | 46 88 | |
| ....do | 10,000 | | 7/8 | 65 62 | |
| Mdse | 2,644 | | 1 1/8 | 29 75 | |
| ....do | 4,596 | | 1 | 34 47 | |
| ....do | 3,452 | | " | 25 89 | |
| ....do | 10,000 | | 5/8 | 46 88 | |
| ....do | 2,500 | | 1 1/4 | 23 44 | |
| ....do | 10,000 | | 3/4 | 56 25 | |
| | | | | 580 83 | |
| Mdse | 1,722 | | 1 | 12 92 | |
| ....do | 1,822 | | 1 1/8 | 17 10 | |
| ....do | 1,566 | | " | 14 68 | |
| ....do | 2,116 | | " | 19 84 | |
| ....do | 4,816 | | " | 45 15 | |
| ....do | 2,592 | | 7/8 | 17 | |
| ....do | 8,040 | | 5/8 | 37 68 | |
| ....do | 155 | | 1 | 1 16 | |
| Forward | | | | 165 53 | |
| Amounts brought forward | | | | 165 53 | |
| 145 Mdse | 5,580 | | 1 | 41 85 | |
| do | 10,000 | | 5/8 | 46 88 | |
| Mdse | 10,000 | | 3/4 | 56 25 | |
| ....do | 10,000 | | " | 56 25 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 297—404 | Apr. 15 | S. S. Tirante | Sagua | Boston |
| " 406 | " 15 | " Amethyst | do | Philada |
| " 407 | " " | " Aio | Sagua | Boston |
| " 410 | " 19 | Bk. Loming | Cienfuegos | do |
| " 411 | " " | " Anita Berwind | Caibarien | do |
| " 412 | " " | " Ethel | do | do |
| " 413 | " " | S. S Irthington | Sagua | N. York |
| " 414 | " " | " Newport | Havana | do |
| " 415 | " " | Bk. Ada Carter | Cardenas | Boston |
| " 416 | " " | S. S. Thornhill | do | Philada |
| " 417 | " " | Bk. J. B. Atkinson | Trinidad | Del. B'water, f. o. |
| " 418 | " 20 | Schr. Adele Thackara | Sagua | Boston |
| " 419 | " " | Bk. Nellie Brett | Matanzas | do |
| " 421 | " 22 | S. S. Tanzier | Cardenas & Havana | do |
| 146 | | | | |
| | 1882. | | | |
| 297—422 | April 22 | Bk. Corinna | Havana | Boston |
| " 423 | " " | S. S. Western Texas | Matanzas via Havana & Fernandina. | N. York |
| " 424 | " 25 | Bk. S. R. Leyman | Matanzas | Boston |
| " 425 | " " | " do | Havana via Matanzas | do |
| " 426 | " " | S. S. Westbourne | Matanzas | N. York |
| " 429 | " 26 | Bk. R. L. F | do | Boston |
| " 430 | " " | Bg. Stocton | Havana | do |
| " 434 | " 29 | S. S. Autocrat | Cardenas | N. York |
| " 435 | " " | " Saratoga | Havana | do |
| " 436 | " " | " Newport | do | do |
| " 437 | " " | " Santiago | Cienfuegos | do |
| " 438 | " " | Bg. Osseo | Havana | Boston |
| 297—444 | May 3 | Bk. Chevalier | Matanzas | Philada |
| " 445 | " " | S. S. Marcia | Sagua | N. York |
| " 446 | " " | " Juliet | Matanzas | U. S |
| " 447 | " " | Bk. Lydia | do | do |
| 148 | | | | |
| 297—448 | May 3 | Schr. Bessie Morris | Havana & Caibarien | N. York |
| " 449 | " " | S. S. Niagara | Havana | do |
| " 450 | " " | " City of Alexandria | do | do |
| " 451 | " " | " Carondelet | Matanzas via ports | do |
| " 452 | " " | Bk. E. Sutton | Havana | do |
| " 454 | " 4 | S. S. St. George | Sagua | Boston |
| " 456 | " 9 | " Thornholme | Mayaguez, &c | do |
| " 457 | " " | " do | Aguadilla | do |
| " 459 | " 10 | Bk. John Baizley | Cardenas | B'water |
| " 460 | " " | S. S. Earl of Lonsdale | St. John, P'to Rico | Boston |
| " 461 | " " | " do | Fajardo via St. John | do |
| " 462 | " " | " do | Stumaco via above ports. | do |
| " 463 | " " | Bk. Woodsire | Barbadoes | do |
| " 464 | " " | " Mary A. Nelson | Havana | N. York |
| " 465 | " " | " David Taylor | do | do |
| " 467 | " 12 | Schr. Jas. M. Riley | Sagua | do |
| " 468 | " " | Bk. M. J. Toby | Havana & Caibarien | do |
| " 469 | " " | " Trevanion | Matanzas | B'water |
| 150 | | | | |
| 297—470 | May 12 | S. S. Thornhill | Matanzas | B'water |
| " 475 | " 16 | Schr. Ida C. Bullard | Havana & Caibarien | N. York |
| " 476 | " " | S. S. Wm. Burkitt | do | do |
| " 477 | " " | " do | Matanzas via Havana | do |
| " 478 | " " | Bk. Keewaydin | Havana | do |
| " 482 | " 19 | S. S. Amethyst | Cardenas | Boston |
| " 489 | " 23 | Bk. Mignon | Havana & Caibarien | N. York |
| " 490 | " " | " Colorado | Matanzas | do |
| " 491 | " " | S. S. Cohanim | Cienfuegos | Boston |
| " 492 | " " | Bk. Harry B. Kitter | Matanzas | Philada |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| | Mdse | 10,000 | | ¾ | 56 25 | |
| | do | 10,000 | | " | 56 25 | |
| | do | 10,000 | | ⅞ | 65 62 | |
| | do | 2,518 | | 2 | 37 77 | |
| | do | 4,460 | | 1¼ | 41 81 | |
| | do | 4,300 | | " | 40 32 | |
| | do | 1,432 | | ¾ | 8 05 | |
| | do | 1,732 | | ⅝ | 8 12 | |
| | do | 144 | | 1½ | 1 35 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | do | 119 | | 1½ | 1 34 | |
| | do | 1,877 | | 1¾ | 17 60 | |
| | do | 8,700 | | 1 | 65 25 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | Forward | | | | 878 99 | |
| 147 | Amounts brought forward | | | | 878 99 | |
| | Mdse | 2,942 | | 1 | 22 06 | |
| | do | 5,154 | | ¾ | 29 | |
| | do | 2,940 | | 1 | 22 05 | |
| | do | 870 | | 1¼ | 8 16 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 818 | | 1 | 6 13 | |
| | do | 650 | | " | 4 87 | |
| | do | 7,064 | | ¾ | 39 74 | |
| | do | 1,780 | | ⅝ | 8 34 | |
| | do | 9,408 | | " | 44 10 | |
| | do | 700 | | ⅞ | 4 60 | |
| | do | 1,610 | | 1 | 12 08 | |
| | | | | | 1,127 | |
| | Mdse | 10,000 | | 2 | 150 | |
| | do | 743 | | ¾ | 4 17 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 1,438 | | 1 | 10 78 | |
| | Forward | | | | 211 83 | |
| 149 | Amounts brought forward | | | | 211 83 | |
| | Mdse | 96 | | 1¼ | 90 | |
| | do | 1,616 | | ⅝ | 7 58 | |
| | do | 2,112 | | ⅞ | 9 90 | |
| | do | 10,000 | | " | 46 88 | |
| | do | 4,820 | | 1 | 36 15 | |
| | do | 10,000 | | ⅞ | 65 63 | |
| | do | 7,144 | | 1 | 53 58 | |
| | do | 2,856 | | ⅞ | 18 74 | |
| | do | 9,178 | | 1½ | 86 04 | |
| | do | 1,146 | | ⅝ | 7 52 | |
| | do | 3,772 | | 1 | 28 29 | |
| | do | 5,082 | | 1⅛ | 42 88 | |
| | do | 72 | | 1¾ | 68 | |
| | do | 570 | | 1 | 4 27 | |
| | do | 6,822 | | " | 51 16 | |
| | do | 1,667 | | 1¼ | 15 63 | |
| | do | 106 | | " | 1 | |
| | do | 3,526 | | 1 | 26 46 | |
| | Forward | | | | 715 12 | |
| 151 | Amounts brought forward | | | | 715 12 | |
| | Mdse | 10,000 | | ⅝ | 46 88 | |
| | Mdse | 5,256 | | 1¼ | 49 28 | |
| | do | 5,000 | | ⅝ | 23 44 | |
| | do | 5,000 | | ¾ | 28 12 | |
| | do | 6,214 | | 1 | 46 60 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | do | 2,202 | | 1 | 16 51 | |
| | do | 7,582 | | " | 56 86 | |
| | do | 7,234 | | " | 54 25 | |
| | do | 766 | | " | 5 74 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 297—493 | May 24 | Bk. Harry Buschman | Barbadoes | Boston |
| " 494 | " 25 | " Colorado | Matanzas | N. York |
| " 495 | " " | S. S. St. Mark | do | U. S |
| " 497 | " 27 | Bk. August Leffler | Nequado | Boston |
| " 498 | " " | S. S. Compton | Cardenas | Philada |
| " 499 | " " | Bg. Emma L. Shaw | Havana | N. York |
| 152 | | | | |
| | 1882. | | | |
| 297—500 | June 2 | Bk. Gousoaer | Havana & Caibarien | N. York |
| " 501 | " " | " Herbert C. Hall | Matanzas | B'water, f. o |
| " 502 | " " | " Weymouth | do | do |
| " 503 | " " | " Plutarch | do | do |
| " 504 | " " | S. S. Marcia | Sagua | N. York |
| " 505 | " " | Bk. Kestrel | do | do |
| " 506 | " " | S. S. City of San Antonio | Matanzas | do |
| " 507 | " " | " Br. Empire | Havana | do |
| " 509 | " 3 | Bk. Au Sable | Humacoa | Boston |
| " 510 | " " | " Lottie | | do |
| " 511 | " 6 | S. S. La Gaule | Havana | do |
| " 512 | " " | " Earl of Lonsdale | do | do |
| " 515 | " 8 | Bk. Alexander Keith | Barbadoes | do |
| " 516 | " " | " Kavdyst | Havana via Sagua | do |
| " 517 | " " | " do | Sagua | do |
| " 518 | " " | S. S. Thornhill | Cardenas | N. York |
| " 519 | " " | Bk. John Bunyan | Matanzas | B'water, f. o |
| " 520 | " " | " Graziella | do | do |
| 154 | | | | |
| | 1882. | | | |
| 297—524 | June 12 | Bk. Esther | Matanzas | Boston |
| " 525 | " 13 | " Walker Armington, Jr | Fajardo | do |
| " 526 | " " | " do | Yubaco via Fajardo | do |
| " 527 | " " | " Shawmut | Matanzas | B'water, f. o |
| " 528 | " " | " Nordenskjold | do | do |
| " 529 | " " | Schr. J. B. Atkinson | do | N. York |
| " 530 | " " | Bk. Alice | do | B'water, f. o |
| " 531 | " " | S. S. Newport | Havana | N. York |
| " 532 | " " | " Viola | Pt. Spain, Tr | Boston |
| " 533 | " 14 | " Consul | Sagua | N. York |
| " 535 | " 16 | Bk. Kamschatka | Cienfuegos | Boston |
| " 536 | " " | S. S. Freja | Porto Rico | do |
| " 537 | " 17 | " Tanzier | Havana via Matanzas | do |
| " 538 | " " | " do | Matanzas | do |
| " 539 | " " | Ship Gov. Langdon | Barbadoes | do |
| 156 | | | | |
| | 1882. | | | |
| 297—543 | June 21 | Bk. Payson Tucker | Arecibo | Boston |
| " 544 | " " | " Dido E. Clark | Matanzas | B'water, f. o |
| " 545 | " " | " Carrie Bertha | do | do |
| " 546 | " " | " Rebecca Carnana | do | N. York |
| " 547 | " " | Bg. Toronto | Guantanamo | Boston |
| " 548 | " 22 | S. S. Glenbervia | Matanzas | Philada |
| " 549 | " " | " Compton | Cardenas via Havana | do |
| " 550 | " " | " do | Havana | do |
| " 552 | " 24 | Bk. Josephine | Guantanamo | Boston |
| " 553 | " " | S. S. Buteshire | Porto Rico | do |
| " 554 | " 27 | Ship Hartfield | Havana | N. York |
| " 555 | " " | S. S. City of San Antonio | Matanzas | do |
| " 561 | " 28 | Bg. Havana | Havana | Boston |
| " 565 | " 30 | | | |
| " 566 | " " | S. S. Cland n | Sagua | N. York |
| " 567 | " " | Bk. Arthur C. Wade | Caibarien | Boston |
| 158 | | | | |
| | 1882. | | | |
| 297—578 | July 3 | S. S. Lykus | Porto Rico | Boston |
| " 584 | " 10 | Bk. Canning | Guantanamo | N. York |
| " 585 | " " | S. S. Newport | Matanzas via Havana | do |
| " 586 | " " | Bk. Robinson Crusoe | Guantanamo | Boston |
| " 587 | " 11 | S. S. St. George | Caibarien | N. York |
| " 588 | " " | Bg. Mary E. Leighton | Havana | do |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| | Mdse | 2,095 | | 1¼ | 19 64 | |
| | do., additional | 270 | | 1 | 2 02 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 90 | | 1¼ | 84 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | do | 506 | | 1 | 3 16 | |
| | | | | | 1,227 84 | |
| 153 | Mdse | 2,259 | | 1¼ | 21 18 | |
| | do | 4,406 | | 1 | 33 04 | |
| | Mdse | 3,540 | | " | 26 55 | |
| | do | 952 | | " | 7 14 | |
| | do | 6,984 | | ¾ | 39 29 | |
| | do | 104 | | 1¼ | 98 | |
| | do | 9,455 | | ⅝ | 44 30 | |
| | do | 10,000 | | " | 46 88 | |
| | do | 641 | | 1¼ | 6 | |
| | do | 455 | | " | 4 27 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 10,000 | | " | 46 88 | |
| | do | 3,500 | | 1¾ | 45 94 | |
| | do | 1,585 | | 1½ | 17 83 | |
| | do | 1,585 | | 1¾ | 14 86 | |
| | do | 5,779 | | ¾ | 32 50 | |
| | do | 3,956 | | 1 | 29 67 | |
| | do | 745 | | " | 5 58 | |
| | Forward | | | | 469 77 | |
| 155 | Amounts brought forward | | | | 469 77 | |
| | Mdse | 1,836 | | 1¾ | 18 93 | |
| | Mdse | 182 | | 1¾ | 1 70 | |
| | do | 546 | | 1½ | 6 14 | |
| | do | 3,062 | | 1 | 22 96 | |
| | do | 3,465 | | " | 26 | |
| | do | 1,034 | | " | 7 75 | |
| | do | 267 | | " | 2 | |
| | do | 8,849 | | ⅝ | 41 48 | |
| | do | 10,000 | | ⅝ | 65 62 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | do | 1,887 | | 1⅛ | 15 92 | |
| | do | 924 | | 1 | 6 93 | |
| | do | 5,000 | | ¾ | 28 12 | |
| | do | 5,000 | | ⅝ | 23 44 | |
| | do | 10,000 | | 1¾ | 131 25 | |
| | Forward | | | | 924 26 | |
| 157 | Amounts brought forward | | | | 924 26 | |
| | Mdse | 1,062 | | 1½ | 11 95 | |
| | Mdse | 3,666 | | 1 | 27 50 | |
| | do | 2,420 | | 1¼ | 22 69 | |
| | do | 190 | | 1 | 1 42 | |
| | do | 91 | | 1½ | 1 02 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 1,250 | | ⅝ | 7 03 | |
| | do | 8,750 | | ⅝ | 41 | |
| | do | 3,064 | | 1½ | 34 47 | |
| | do | 10,000 | | 1⅝ | 87 50 | |
| | do | 1,462 | | 1 | 10 96 | |
| | do | 10,000 | | ⅝ | 46 88 | |
| | do | 5,853 | | 1 | 43 89 | |
| | do | 10,000 | | ¾ | 56 25 | |
| | do | 3,972 | | 1¼ | 37 24 | |
| | | | | | 1,400 94 | |
| 159 | Mdse | 10,000 | | 1¼ | 84 38 | |
| | do | 6,963 | | 1½ | 78 34 | |
| | Mdse | 5,409 | | ⅝ | 30 43 | |
| | do | 181 | | 1⅛ | 2 03 | |
| | do | 10,000 | | ⅝ | 56 25 | |
| | do | 716 | | 1 | 5 37 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 297—590 | July 12 | Bg. Daphne | Caibarien | Philada. |
| " 592 | " 18 | S. S. Freja | Porto Rico | Boston |
| " 593 | " " | Bg. J. F. Merry | Cardenas | do |
| " 597 | " 24 | S. S. Lykus | Fajardo | do |
| " 598 | " " | " do | Arecibo via Fajardo | do |
| " 599 | " " | " do | Mayaguez via Arecibo & Fajardo. | do |
| " 600 | " " | Bk. Adolph Engler | Matanzas via Havana | do |
| " 601 | " " | " do | Havana | do |
| " 602 | " 25 | " Robert Murray, Jr | do | Philada. |
| 160 | | | | |
| | 1882. | | | |
| 297—617 | Aug. 4 | Bk. Payson Tucker | Yubacoa | Boston |
| " 618 | " " | " do | Havana via Yubacoa | do |
| " 621 | " " | S. S. Compton | Havana | Philada |
| " 622 | " " | " Newport | do | N. York |
| " 623 | " " | " Br. Empire | do | do |
| " 625 | " 7 | Bk. Anita Berwind | Mayaguez | Philada. |
| " 626 | " " | " do | Fajardo via Mayaguez | do |
| " 630 | " 8 | Schr. J. D. Robinson | Matanzas | Boston |
| " 631 | " " | Bg. Mary Gibbs | do | do |
| " 633 | " " | Schr. Lucy A. Davis | Havana | Philada |
| " 634 | " 16 | Bg. Tanfa | Cardenas | Boston |
| " 641 | " 24 | Bk. Mary C. Hule | Havana | N. York |
| " 642 | " " | " do | do | do |
| 297—657 | Sept. 8 | Bk. Josephine | Havana | Boston |
| " 658 | " " | " Schobeleff | Cardenas | Philada |
| " 659 | " " | " Havana | Havana | N. York |
| " " | " " | " do | do | do |
| " 660 | " " | " Helen Finlayson | do | Boston |
| 162 | | | | |
| | 1882. | | | |
| 297—665 | Sept. 9 | S. S. City of Washington | Havana | N. York |
| " 666 | " " | Bk. Arthur C. Wade | Cardenas | Boston |
| " 674 | " 15 | S. S. Compton | Havana | Philada. |
| " 677 | " 18 | Bk. Chestina Redman | Arecibo | Boston |
| " 682 | " 21 | " Edw'd A. Sanchez | Havana | do |
| " 684 | " 23 | " Antonio Sala | do | do |
| " 685 | " " | S. S. Br. Empire | do | N. York |
| " 690 | " 28 | Bk. Robinson Crusoe | Cardenas | Philada. |
| 297—698 | Oct. 3 | S. S. Br. Empire | Havana | N. York |
| " 699 | " " | Bk. Eva H. Fisk | Matanzas | Philada. |
| " 717 | " 10 | " Rebecca Crowell | Havana | do |
| " 719 | " 12 | S. S. Newport | do | N. York |
| " 731 | " 19 | Bg. Sagua | Sagua | Philada. |
| " " | " " | " do | do | do |
| " 744 | " 28 | Bk. Chas. F. Ward | Matanzas | do |
| 164 | | | | |
| | 1882. | | | |
| 297—749 | Nov. 2 | S. S. Br. Empire | Havana | N. York |
| " 770 | " 14 | Bk. Matanzas | do | Philada. |
| " 771 | " " | S. S. City of Puebla | do | N. York |
| " 772 | " " | " Santiago | do | do |
| " 773 | " " | " City of Alexandria | do | do |
| " 792 | " 20 | Bk. Fanny B. Tucker | do | Boston |
| " 793 | " " | " Antonio Sala | do | do |
| 297—808 | Dec. 2 | Bk. Skobeloff | Havana | U. S. |
| " 809 | " " | S. S. Br. Empire | do | N. York |
| " 817 | " 6 | " City of Washington | do | do |
| " 818 | " " | Bk. Albert Schultz | do | Boston |
| " 829 | " 12 | S. S. Br. Empire | do | N. York |
| " 830 | " " | " City of Puebla | do | do |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 646 | | 1¼ | 6 05 | |
| ....do | 8,113 | | 1⅛ | 68 45 | |
| ....do | 1,001 | | 1¾ | 9 38 | |
| ....do | 3,333 | | ⅝ | 21 87 | |
| ....do | 4,167 | | 1⅛ | 35 16 | |
| ....do | 2,500 | | 1⅜ | 23 44 | |
| ....do | 967 | | " | 9 07 | |
| ....do | 2,901 | | 1 | 21 75 | |
| ....do | 52 | | " | 39 | |
| | | | | 452 36 | |
| 161 Mdse | 566 | | 1¼ | 5 30 | |
| ....do | 566 | | 1⅛ | 6 37 | |
| Mdse | 10,000 | | ⅝ | 46 88 | |
| ....do | 3,486 | | " | 16 34 | |
| ....do | 3,108 | | " | 14 57 | |
| ....do | 2,520 | | 1¼ | 23 62 | |
| ....do | 2,520 | | 1½ | 28 35 | |
| ....do | 867 | | 1 | 6 50 | |
| ....do | 478 | | " | 3 58 | |
| ....do | 5,427 | | " | 40 70 | |
| ....do | 2,274 | | 1¾ | 21 32 | |
| Sugar in hhds | 1,754 | | 1 | 13 16 | |
| ....do. " sacks | 4,350 | | 1¾ | 40 79 | |
| | | | | 267 48 | |
| Mdse | 2,635 | | 1 | 19 76 | |
| ....do | 3,300 | | 1¾ | 30 94 | |
| Sugar in hhds | 7,733 | | 1 | 58 | |
| ....do. " bags | 1,289 | | 1¾ | 12 08 | |
| Mdse | 4,705 | | 1 | 35 29 | |
| Forward | | | | 156 07 | |
| 163 Amounts brought forward | | | | 156 07 | |
| Mdse | 4,986 | | ⅝ | 23 37 | |
| Mdse | 2,826 | | 1¼ | 26 49 | |
| ....do | 10,000 | | ⅝ | 46 88 | |
| ....do | 750 | | 1¼ | 7 04 | |
| ....do | 1,447 | | 1 | 10 85 | |
| ....do | 4,213 | | " | 31 59 | |
| ....do | 138 | | ⅝ | 65 | |
| ....do | 214 | | 1⅜ | 2 | |
| | | | | 304 94 | |
| Mdse | 633 | | ⅝ | 2 96 | |
| ....do | 3,390 | | 1 | 25 42 | |
| ....do | 2,700 | | " | 20 25 | |
| ....do | 2,748 | | ⅝ | 12 88 | |
| ....do | 650 | | 1⅜ | 6 50 | |
| ....do., on deck | 50 | | 4½ | 1 80 | |
| ....do | 2,547 | | 1 | 19 10 | |
| | | | | 88 91 | |
| 165 Mdse | 5,328 | | ⅝ | 24 98 | |
| ....do | 5,580 | | 1 | 41 85 | |
| Mdse | 1,188 | | ⅝ | 5 57 | |
| ....do | 247 | | " | 1 16 | |
| ....do | 3,816 | | " | 17 89 | |
| ....do | 662 | | 1 | 4 97 | |
| ....do | 3,371 | | " | 25 28 | |
| | | | | 121 70 | |
| Mdse | 3,218 | | 1 | 24 13 | |
| ....do | 5,328 | | ⅝ | 24 98 | |
| ....do | 3,450 | | " | 16 18 | |
| ....do | 840 | | 1 | 6 30 | |
| ....do | 10,000 | | ⅝ | 46 88 | |
| ....do | 1,923 | | " | 9 01 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 297—831 | Dec. 12 | Schr. G. W. Lockner | Havana | Boston |
| " 845 | " 28 | " Thos. W. Hyde | Cardenas | Philada |
| 166 | | | | |
| | 1883. | | | |
| 297—862 | Jan'y 3 | S. S. Newport | Havana | N. York |
| 864 | " 6 | Bk. Skerryvore. | do | Boston |
| 879 | " 19 | Schr. Grace Bradley | do | do |
| 880 | " " | Bg. C. C. Sweeney | do | do |
| 890 | Feb'y 1 | S. S. Gen'l Roberts | Cienfuegos | Boston |
| 899 | " 8 | Schr. Annie L. Henderson | Havana | do |
| 902 | " 17 | S. S. Richmond | Cardenas | Philada |
| 903 | " 13 | Bk. Chas. F. Ward | Havana | Boston |
| 911 | " 23 | S. S. Thetford | Cienfuegos | do |
| 912 | " 26 | " Turquoise | Matanzas | do |
| 919 | Mar. 1 | S. S. Topaz | Cardenas | Boston |
| 920 | " " | Schr. J. D. Robinson | Matanzas | U. S. |
| 921 | " " | S. S. Gen'l Roberts | Cienfuegos | Boston |
| 924 | " 2 | Schr. Gertrude Abbatt | Cardenas | do |
| 933 | " 16 | S. S. Spark | Humacoa | do |
| 168 | | | | |
| | 1883. | | | |
| 297—934 | M'ch 16 | S. S. Newport | Havana | N. York |
| 935 | " " | " Saratoga | do | do |
| 936 | " " | Bg. Jno. Swan | Matanzas | do |
| 937 | " 20 | Bk. Pacific | Havana | Philada |
| 942 | " 28 | " Louise Adelaide | do | N. York |
| 959 | Ap'l 9 | Bk. Helen Sands | Havana & Sagua | U. S. |
| 960 | " " | " Alert | Sagua | do |
| 961 | " " | " Elgin | Havana | N. York |
| 962 | " " | " Levi S. Andrews | Matanzas | Boston |
| 963 | " " | S. S. Newport | Havana | N. York |
| 964 | " 11 | " Dalesford | Matanzas | do |
| 965 | " " | Schr. Julia A. Ward | Havana | do |
| 966 | " " | S. S. Thornhill | Cienfuegos | U. S. |
| 967 | " " | " Clandon | Cardenas & Sagua | Boston |
| 968 | " " | Bg. Herman | Arecibo | do |
| 969 | " " | S. S. Spark | Porto Rico | do |
| 170 | | | | |
| | 1883. | | | |
| 297—970 | Ap'l 11 | S. S. Marlborough | Cardenas | N. York |
| 973 | " 12 | " Niagara | Havana | do |
| 974 | " " | " Knickerbocker | Caibarien | do |
| 977 | " 19 | " Gen'l Roberts | Cienfuegos | Boston |
| 978 | " " | " Compton | Cardenas | N. York |
| 979 | " " | " Thetford | Cienfuegos | Boston |
| 980 | " " | Bk. Christina | Havana | N. York |
| 993 | " 27 | Bg. C. C. Sweeney | Caibarien | U. S. |
| 994 | " " | " Annie E. Batchelder | Trinidad | do |
| 995 | " " | S. S. Gevalia | Sagua | Boston |
| 996 | " " | " Cydonia | Cardenas | B'water, f. o. |
| 997 | " " | Bk. Annie Morrill | Havana | Philada |
| 998 | " " | " Miranda | Sagua | N. York |
| 999 | " " | S. S. Saratoga | Havana | do |
| 1000 | " " | Bk. Juffnar | do | do |
| 1001 | " " | " Carpione | do | do |
| 172 | | | | |
| | 1882. | | | |
| 297—619 | Aug. 5 | Bk. Adeline C. Adams | Matanzas & Cardenas | Philada |
| | 1883. | | | |
| 1009 | May 7 | Schr. Geo. Hull | do | Boston |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 1,070 | | 1 | 8 02 | |
| ....do | 1,006 | | 1¼ | 9 43 | |
| | | | | 144 93 | |
| 167 Mdse | 2,536 | | ⅝ | 11 89 | |
| ....do | 1,428 | | 1½ | 16 07 | |
| Mdse | 1,575 | | 1 | 11 82 | |
| ....do | 2,910 | | " | 21 83 | |
| | | | | 61 61 | |
| Mdse | 3,230 | | ⅞ | 21 20 | |
| ....do | 124 | | 1 | 1 93 | |
| ....do | 10,000 | | ¾ | 56 25 | |
| ....do | 1,130 | | 1 | 8 47 | |
| ....do | 1,347 | | ⅞ | 8 84 | |
| ....do | 10,000 | | ¾ | 56 25 | |
| | | | | 151 94 | |
| Mdse | 7,320 | | ⅞ | 48 04 | |
| ....do | 270 | | 1 | 2 02 | |
| ....do | 3,186 | | ⅞ | 20 91 | |
| ....do | 2,586 | | 1¼ | 24 24 | |
| ....do | 3,034 | | ⅞ | 19 90 | |
| Forward | | | | 115 11 | |
| 169 Amounts brought forward | | | | 115 11 | |
| Mdse | 1,705 | | ⅝ | 8 | |
| Mdse | 7,020 | | " | 32 91 | |
| ....do | 3,581 | | 1 | 26 85 | |
| ....do | 3,252 | | " | 24 40 | |
| ....do | 7,375 | | " | 55 32 | |
| | | | | 262 59 | |
| Mdse | 4,248 | | 1¼ | 39 80 | |
| ....do | 1,713 | | " | 16 06 | |
| ....do | 5,416 | | " | 50 78 | |
| ....do | 4,782 | | 1 | 35 87 | |
| ....do | 5,587 | | ⅝ | 26 19 | |
| ....do | 2,759 | | " | 12 93 | |
| ....do | 4,228 | | 1 | 31 71 | |
| ....do | 6,138 | | ⅞ | 40 29 | |
| ....do | 10,000 | | " | 65 62 | |
| ....do | 84 | | 1¼ | 79 | |
| ....do | 10,000 | | ⅞ | 65 62 | |
| Forward | | | | 385 66 | |
| 171 Amounts brought forward | | | | 385 66 | |
| Mdse | 10,000 | | ⅞ | 65 62 | |
| Mdse | 10,000 | | ⅝ | 46 88 | |
| ....do | 3,516 | | ¾ | 19 78 | |
| ....do | 3,968 | | ⅞ | 26 04 | |
| ....do | 10,000 | | ¾ | 56 25 | |
| ....do | 850 | | ⅞ | 5 57 | |
| ....do | 3,183 | | 1 | 23 87 | |
| ....do | 6,362 | | " | 47 72 | |
| ....do | 1,750 | | 1¼ | 19 69 | |
| ....do | 10,000 | | ⅝ | 65 62 | |
| ....do | 10,000 | | ¾ | 56 25 | |
| ....do | 4,228 | | 1 | 31 71 | |
| ....do | 1,111 | | 1¼ | 10 42 | |
| ....do | 10,000 | | ⅝ | 46 88 | |
| ....do | 3,390 | | 1 | 25 42 | |
| ....do | 1,405 | | " | 10 54 | |
| | | | | 943 92 | |
| 173 Mdse | 1,262 | | 1 | 9 46 | |
| Mdse | 711 | | " | 5 33 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1883. | | | |
| 297—1010 | May 7 | S. S. Ardanrigh | St. Pierre | Boston |
| 1011 | " " | " Br. Empire | Havana | N. York |
| 1019 | " 12 | Schr. Quaker City | Trinidad | Boston |
| 1020 | " " | " W. L. Roberts | Sagua | N. York |
| 1021 | " " | " F. L. Richardson | Matanzas | Boston |
| 1022 | " " | " Nelson E. Newberry | Sagua | U. S. |
| 1023 | " " | Bk. Bonnie Doon | Cardenas | do. |
| 1024 | " " | S. S. Gen'l Roberts | Cienfuegos. | Boston |
| 1025 | " " | Bk. W. Armington, Jr. | Matanzas | U. S. |
| 1026 | " " | S. S. Knickerbocker | Sagua | N. York |
| 1027 | " " | " Niagara | Havana | do. |
| 1035 | " 21 | " Thetford | Cienfuegos | Boston |
| 1036 | " " | Bk. Sam'l Welsh | Havana | Philada |
| 1037 | " " | S. S. Newport | do | N. York |
| 1038 | " " | " Saratoga | do | do. |
| 1039 | " " | " Santiago | Cienfuegos | do. |
| 1040 | " " | " Freja | Pt. Spain | do. |
| 174 | | | | |
| | 1883. | | | |
| 297—1044 | May 29 | Bk. T. L. Sweet | Cardenas | Philada |
| 1045 | " " | " David Taylor | Havana | Boston |
| 1046 | " " | " Stephen G. Hart | Sagua | N. York |
| 1047 | " " | Bg. Clara Pickins | Cardenas | U. S. |
| 1048 | " " | Bk. Brimiga | Sagua | N. York |
| 1049 | " " | " Jennie Sweeney | do. | B'water, f. o. |
| 1050 | " " | " Wawalench | Barbadoes | Boston |
| 1053 | June 4 | Bk. Eva H. Fisk | Sagua | U. S. |
| 1054 | " " | S. S. Gen'l Roberts | Cienfuegos | do. |
| 1055 | " " | " Amethyst | Havana | N. York |
| 1056 | " " | Schr. Rob't J. Barr | Cardenas | Philada |
| 1057 | " " | Bk. Mendota | Sagua | U. S. |
| 1061 | " 12 | " C. E. Robinson | do. | Boston |
| 1062 | " " | " Dronning Louise | St. Jago | do. |
| 1063 | " " | " Virginia L. Stafford | Sagua | N. York |
| 1064 | " " | S. S. Spark | Porto Rico | Boston |
| 1074 | " 14 | " Gwalia | Cardenas | Philada |
| 176 | | | | |
| | 1883. | | | |
| 297—1076 | June 22 | Bk. Mercurius | St. Jago & Guantanamo. | Boston |
| 1077 | " " | Schr. Jno. R. Bergen | Caibarien | U. S. |
| 1078 | " " | Bk. Frithyoff | St. Vincent | Boston |
| 1079 | " " | Schr. G. G. Green | Sagua | do. |
| 1080 | " " | S. S. Angerhead | Barbadoes, &c. | N. York |
| 1081 | " " | Schr. Jno. C. Noyes | Havana | Boston |
| 1082 | " " | Bk. Matthew Baird | Zuza | N. York |
| 1083 | " " | " Bertha | Havana | do. |
| 1086 | " 27 | " Hadeom | Manzanilla | do. |
| 1087 | " 29 | " Adolph Engler | Havana | U. S. |
| 1088 | " " | " Willie McLaren | Cienfuegos | Boston |
| 1089 | " " | S. S. Bahrenfeld | Matanzas | N. York |
| 1090 | " " | Schr. Chas. A. Conlomb | Sagua | do. |
| 1091 | " " | S. S. Taglisferro | do. | do. |
| 1092 | " " | " Nutford | Cienfuegos | Boston |
| 1093 | " " | " Cyphrenes | Barbadoes, &c | N. York |
| 178 | | | | |
| | 1883. | | | |
| 297—1103 | July 11 | Bk. Justin H. Ingersoll | Porto Rico | Boston. |
| 1104 | " " | Bg. Helios | Guadeloupe | Philada |
| 1105 | " " | Bk. Ef. McManenry | Havana | U. S. |
| 1106 | " " | S. S. Gen'l Roberts | Cienfuegos | Boston |
| 1107 | " 19 | Bk. Ada L. White | Sagua | N. York |
| 1108 | " " | " Enigma | Cardenas | U. S. |
| 1109 | " " | " Frithyof | Guantanamo | Philada |
| 1110 | " " | " Anna | Barbadoes | Boston |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Mdse | 560 | | 7/8 | 3 68 | |
| ....do | 483 | | 5/8 | 2 27 | |
| ....do | 444 | | 1 1/8 | 5 | |
| ....do | 4,555 | | 1 1/4 | 42 71 | |
| ....do | 1,636 | | 1 | 12 27 | |
| ....do | 4,302 | | 1 1/4 | 40 34 | |
| ....do | 924 | | " | 8 66 | |
| ....do | 2,569 | | 7/8 | 16 86 | |
| ....do | 5,500 | | 1 | 41 25 | |
| ....do | 10,000 | | 3/4 | 56 25 | |
| ....do | 9,273 | | 5/8 | 43 46 | |
| ....do | 727 | | 5/8 | 4 77 | |
| ....do | 4,535 | | 1 | 34 01 | |
| ....do | 7,833 | | 5/8 | 36 72 | |
| ....do | 10,000 | | " | 46 87 | |
| ....do | 7,718 | | 7/8 | 50 65 | |
| ....do | 4,811 | | " | 31 58 | |
| Forward | | | | 492 14 | |
| 175 Amounts brought forward | | | | 492 14 | |
| Mdse | 1,650 | | 1 1/4 | 15 47 | |
| Mdse | 2,790 | | 1 | 20 92 | |
| ....do | 1,683 | | 1 1/4 | 15 78 | |
| ....do | 1,649 | | " | 15 46 | |
| ....do | 4,667 | | " | 43 76 | |
| ....do | 3,175 | | " | 29 77 | |
| ....do | 527 | | " | 4 94 | |
| | | | | 638 24 | |
| Mdse | 3,291 | | 1 1/4 | 30 86 | |
| ....do | 3,834 | | 5/8 | 25 16 | |
| ....do | 5,230 | | 5/8 | 24 52 | |
| ....do | 2,626 | | 3/4 | 24 62 | |
| ....do | 1,018 | | " | 9 54 | |
| ... do | 889 | | " | 8 33 | |
| ....do | 1,161 | | 1 1/8 | 13 07 | |
| ....do | 1,458 | | 1 1/4 | 13 67 | |
| ....do | 2,103 | | 7/8 | 13 80 | |
| ....do | 10,000 | | 3/4 | 56 25 | |
| Forward | | | | 219 82 | |
| 177 Amounts brought forward | | | | 219 82 | |
| Mdse | 3,358 | | 2 | 50 37 | |
| Mdse | 4,456 | | 1/8 | 41 78 | |
| ....do | 1,352 | | " | 12 68 | |
| ....do | 5,795 | | " | 54 33 | |
| ....do | 9,755 | | 3/4 | 54 87 | |
| ....do | 172 | | 1 | 1 29 | |
| ....do | 1,162 | | 1 1/8 | 13 07 | |
| ....do | 705 | | 1 | 5 28 | |
| ....do | 2,110 | | 1 1/8 | 23 74 | |
| ....do | 4,770 | | 1 | 35 77 | |
| ....do | 1,561 | | 1 1/8 | 17 56 | |
| ....do | 2,324 | | 5/8 | 10 90 | |
| ....do | 167 | | 1 1/8 | 1 58 | |
| ....do | 6,592 | | 3/4 | 37 08 | |
| ....do | 798 | | 7/8 | 5 24 | |
| ....do | 10,000 | | 3/4 | 56 25 | |
| | | | | 641 61 | |
| 179 Mdse | 217 | | 1 1/4 | 2 04 | |
| ....do | 1,850 | | " | 17 34 | |
| Mdse | 5,061 | | 1 | 37 95 | |
| ....do | 4,177 | | 7/8 | 27 41 | |
| ....do | 663 | | 1 1/8 | 6 22 | |
| ....do | 7,094 | | " | 66 51 | |
| ....do | 1,062 | | 1 1/8 | 11 95 | |
| ....do | 1,306 | | 1 1/4 | 12 25 | |

*Exhibit C—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1883. | | | |
| 297—1111 | July 19 | Bk. Esther | Porto Rico | U. S. |
| 1112 | " 21 | " Nordcap | Sagua | do |
| 1118 | Aug. 2 | Bk. Wallace | Cardenas | N. York |
| 1119 | " " | S. S. West Cumberland | St. Pierre | Boston |
| 1120 | " " | Bk. T. L. Sweat | Cardenas | do. |
| 1121 | " " | " American Lloyds | Porto Rico | do. |
| 1128 | " 9 | S. S. Jesmond | do. | do. |
| 1129 | " " | Bk. Mariner | Barbadoes | do. |
| 1130 | " " | " Chas. Loving | Cardenas | N. York |
| 180 | | | | |
| | 1883. | | | |
| 1135 | Aug. 21 | Bk. Chas. F. Ward | Cardenas | N. York |
| 1136 | " " | " Alice | Barbadoes | Boston |
| 1137 | " " | " Harriet S. Jackson | Cardenas | do. |
| 1139 | " 29 | S. S. Amethyst | Havana & Sagua | do. |
| 1140 | " " | Bk. Alice | Guantanamo | Philada. |
| 1141 | " " | Bg. Screamer | Matanzas. | Boston |
| 1152 | Sept. 10 | S. S. Lena | Matanzas | N. York |
| 1153 | " " | Schr. Jno. R. Bergen | do. | U. S. |
| 1154 | " " | Bk. Augustine Kobbe | Zaza | N. York |
| 1155 | " 17 | S. S. Muriel | Martinique | Philada. |
| 1156 | " " | Bk. A. C. Wade | Caibarien | Boston |
| 1163 | Oct. 4 | Bk. Jeanie | P'to Rico | Boston |
| 1164 | " " | S. S. Amethyst | Matanzas | do. |
| 1165 | " " | Bk. Nellie C. Rumball | Cienfuegos | do. |
| 1166 | " " | " Jeanie Sontit | Demerara | do. |
| 182 | | | | |
| | 1883. | | | |
| 1174 | Oct. 11 | Bk. Lillian | Matanzas | U. S. |
| 1175 | " " | It. schr. Walker Armington | Porto Rico | do |
| 1176 | " " | Bk. Doris Eckhoff | Havana | do |
| 1177 | " " | S. S. Br. Empire | do | do |
| 1178 | " " | " Canonbury | Porto Rico | do |
| 1192 | Nov. 3 | Aux. S. S. Jeanie | Porto Rico | Boston |
| 1193 | " " | Bk. American Lloyds | Guantanamo | Philada. |
| 1194 | " " | S. S. Br. Empire | Havana | N. York |
| 1195 | " " | Bk. Dido E. Clark | Demerara | Philada. |
| 1123 | " 23 | S. S. Pensher | Havana | Boston |
| 1124 | " " | Aux. S. S. Walker Armington | Porto Rico | do |
| 1125 | " " | Schr. Belle Hooper | Demerara | Philada. |
| 1244 | Dec. 20 | Bk. Au Sable | Matanzas | Boston |

Continued.

| | Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|---|
| | Mdse | 77 | | 1¾ | 1 01 | |
| | do | 182 | | 1¾ | 1 70 | |
| | | | | | 184 38 | |
| | Mdse | 6,440 | | 1⅜ | 60 37 | |
| | do | 10,000 | | ⅞ | 65 62 | |
| | do | 1,072 | | 1¼ | 10 05 | |
| | do | 95 | | " | 89 | |
| | do | 5,000 | | 1 | 37 50 | |
| | do | 1,855 | | 1¾ | 17 39 | |
| | do | 2,589 | | " | 24 27 | |
| | Forward | | | | 216 09 | |
| 181 | Amounts brought forward | | | | 216 09 | |
| | Mdse | 940 | | 1¾ | 8 81 | |
| | Mdse | 2,194 | | " | 20 57 | |
| | do | 788 | | " | 7 39 | |
| | do | 5,000 | | ⅞ | 32 81 | |
| | do | 621 | | 1⅜ | 6 98 | |
| | do | 1,054 | | 1 | 7 90 | |
| | | | | | 300 55 | |
| | Mdse | 5,000 | | ⅝ | 23 44 | |
| | do | 4,028 | | 1 | 30 21 | |
| | do | 3,980 | | 1⅜ | 44 78 | |
| | do | 72 | | ¾ | 40 | |
| | do | 1,655 | | 1¾ | 15 52 | |
| | | | | | 114 35 | |
| | Mdse | 3,419 | | 1 | 25 64 | |
| | do | 5,000 | | ⅝ | 23 44 | |
| | do | 200 | | 1½ | 2 25 | |
| | do | 2,770 | | 1¾ | 25 96 | |
| | Forward | | | | 77 29 | |
| 183 | Amounts brought forward | | | | 77 29 | |
| | Mdse | 3,909 | | 1 | 29 32 | |
| | Mdse | 2,806 | | " | 21 04 | |
| | do | 1,021 | | " | 7 65 | |
| | do | 1,014 | | ⅝ | 4 76 | |
| | do | 5,000 | | ⅞ | 32 81 | |
| | | | | | 172 87 | |
| | Mdse | 4,400 | | ⅞ | 28 87 | |
| | do | 1,368 | | 1⅛ | 15 38 | |
| | do | 1,491 | | ⅝ | 6 98 | |
| | do | 3,181 | | 1⅛ | 35 78 | |
| | do | 3,217 | | ⅝ | 15 08 | |
| | do | 5,000 | | 1⅛ | 42 19 | |
| | do | 1,851 | | 1¾ | 20 83 | |
| | | | | | 165 11 | |
| | Mdse | 1,625 | | 1 | 12 18 | |

184 & 185

EXHIBIT D.

U. S. C.

"EXHIBIT D." Filed with

| 186 Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1882. | | | |
| 306—679 | Sept. 19 | S. S. Alava | N. Orleans | L'pool |
| " 680 | " " | " City of Rome | N. York | do |
| " 681 | " " | " Germanic | do | do |
| " 688 | " 27 | " Rouen | N. Orleans | do |
| 306—705 | Oct. 9 | S. S. Wisconsin | N. York | L'pool |
| " 706 | " " | " Jenny Otto | Galveston | do |
| " 707 | " " | " Celtic | N. York | do |
| " 708 | " " | " Nymphea | Savannah | Barcelona |
| " 709 | " " | " Linhope | Galveston | L'pool |
| " 710 | " " | " Cydonia | Savannah | do |
| " 711 | " " | " Propitious | Galveston | do |
| " 713 | " " | " Br. Crown | Philada. | do |
| " 714 | " " | " City of Berlin | N. York | do |
| " 715 | " " | " Rhynland | do | Antwerp |
| " 716 | " " | " Abyssinia | do | L'pool |
| " 724 | " 18 | " Flos | Galveston | do |
| 188 | | | | |
| | 1882. | | | |
| 306—725 | Oct. 18 | S. S. Nessmore | Baltimore | L'pool |
| " 726 | " " | " Annie | Charleston | do |
| " 733 | " 21 | " Wydal | Norfolk | do |
| " 734 | " " | " Mareca | West Point | do |
| " 735 | " " | " Ashbrooke | Galveston | Havre |
| " 737 | " 23 | " Crystal | do | L'pool |
| " 739 | " 26 | " Leonora | Balto. | do |
| " 740 | " " | " Lord Gough | Philada. | do |
| " 741 | " " | " Hesper | Galveston | do |
| " 742 | " " | " Erin | N. York | do |
| " 743 | " " | " Mentmore | Balto. | do |
| " 745 | " 31 | " Asturiano | Galveston | Havre |
| 306—750 | Nov. 3 | S. S. James Gray | Charleston | L'pool |
| " 751 | " " | " Altnacraig | N. Orl's | Havre |
| " 752 | " " | " Benlarig | Norfolk | L'pool |
| " 753 | " " | " Cubano | Balto. | do |
| 190 | | | | |
| | 1882. | | | |
| 306—754 | Nov. 6 | S. S. Paris | N. Orleans | Havre |
| " 759 | " 7 | " Thanemore | Balto. | L'pool |
| " 760 | " " | " Alsatia | Norfolk | do |
| " 761 | " " | Bk. Ponema | Charleston | do |
| " 762 | " " | S. S. Bellini | West Point | do |
| " 766 | " 10 | " Australian | Galveston | do |
| " 767 | " " | Bk. Fornjot | do | Cork, f. o. |
| " 768 | " " | S. S. Andean | do | L'pool |
| " 769 | " 11 | " Armathwaite | do | do |
| " 774 | " 14 | " Ayrshire | Priv. coal port Galveston. | do |
| " 761 | " " | Bk. Ponema | Charleston | do |
| " 775 | " " | S. S. Brantford City | Norfolk | do |
| " 776 | " " | " Dupuy de Lorne | N. Orl's | Havre |
| " 777 | " 17 | " Regulus | Savannah, priv. of Sydney for coal. | do |
| " 778 | " " | " Wyoming | N. York | L'pool |
| " 779 | " " | " Sapphire | Galveston, priv. coal port. | do |
| " 780 | " " | " Prinz Georg | N. Orleans | Havre |
| " 781 | " " | " Lord Clive | Philada. | L'pool |

E. S. H. 10, 21, '84.

C. 10647.

Answer November 29th, 1884.

| 187 Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Cotton | 1,360 | | 7/8 | 11 31 | |
| ....do | 4,800 | | 1/4 | 11 40 | |
| ....do | 6,841 | | " | 16 25 | |
| ....do | 10,000 | | 3/4 | 71 25 | |
| | | | | 110 21 | |
| Cotton | 4,190 | | 1/4-5 | 9 96 | |
| ....do | 2,330 | | 3/4 " | 16 60 | |
| ....do | 1,170 | | 1/4 " | 2 78 | |
| ....do | 9,142 | | 3/4 " | 54 28 | |
| ....do | 1,286 | | 7/8 " | 10 68 | |
| ....do | 3,768 | | 1/2 " | 17 90 | |
| ....do. Priv. coal port | 10,000 | | 7/8 " | 83 13 | |
| ....do | 6,000 | | 1/4 " | 14 25 | |
| ....do | 220 | | " " | 52 | |
| ....do | 3,608 | | 3/4 " | 12 86 | |
| ....do | 2,006 | | 1/4 " | 4 76 | |
| ....do. Priv. coal port | 6,417 | | 1 " | 60 96 | |
| Forward | | | | 288 68 | |
| 189 Amounts brought forward | | | | 288 68 | |
| Cotton | 6,917 | | 3/4-5 | 24 64 | |
| Cotton | 10,000 | | 1/2 " | 47 50 | |
| ....do | 10,000 | | 3/4 " | 35 62 | |
| ....do | 10,000 | | " " | 35 62 | |
| ....do | 10,000 | | 3/4 " | 71 25 | |
| ....do. Priv. coal port | 10,000 | | 1 " | 95 | |
| ....do | 810 | | 3/4-25 | 2 28 | |
| ....do | 5,988 | | 1/4-5 | 14 22 | |
| ....do. Priv. coal port | 500 | | 7/8 " | 4 15 | |
| ....do | 1,355 | | 3/4 " | 3 22 | |
| ....do | 4,410 | | 3/4-25 | 12 40 | |
| ....do | 10,000 | | 3/4-5 | 71 25 | |
| | | | | 705 83 | |
| Cotton | 6,178 | | 1/2 | 29 35 | |
| ....do | 4,800 | | 3/4 | 34 20 | |
| ....do | 10,000 | | 3/4 | 35 63 | |
| ....do | 1,360 | | " | 3 82 | |
| Forward | | | | 103 | |
| 191 Amounts brought forward | | | | 103 | |
| Cotton | 10,000 | | 3/4-5 | 71 25 | |
| Cotton | 6,300 | | 3/4 " | 17 72 | |
| ....do | 3,234 | | " " | 11 52 | |
| ....do | 10,000 | | 1/2 " | 47 50 | |
| ....do | 10,000 | | 3/4 " | 35 62 | |
| ....do | 5,432 | | 3/4 " | 38 70 | |
| ....do | 5,667 | | 1 1/2 " | 80 75 | |
| ....do | 9,008 | | 3/4 " | 64 18 | |
| ....do | 10,000 | | 13-16 " | 77 20 | |
| ....do., f. p. a. E. C | 10,000 | | 15-16 " | 89 06 | |
| 3/4 % additional, cotton, reported at 1/4 % in error | | | 3/4 " | 35 62 | |
| Cotton | 6,575 | | " " | 23 42 | |
| ....do | 1,950 | | 3/4 " | 13 90 | |
| ....do., f. p. a. E. C | 1,077 | | " " | 7 68 | |
| ....do | 9,648 | | 1/4 " | 22 92 | |
| ....do | 5,730 | | 7/8 " | 47 63 | |
| ....do | 6,417 | | 3/4 " | 45 73 | |
| ....do | 2,388 | | 3/4 " | 5 67 | |
| Forward | | | | 839 07 | |

*Exhibit D—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| 192 | 1882. | | | |
| 306—782 | Nov. 17 | S. S. Arizona | N. York | L'pool |
| " 783 | " " | " Iowa | Boston | do |
| " 784 | " " | Bk. James Kenway | Charleston | do |
| " 785 | " " | S. S. Provincia | N. Orleans | do., Havre |
| " 786 | " " | " Kansas | Boston | do |
| " 751 | " " | " Altnacraig | N. York, N. Orleans | do., Havre |
| " 789 | " 21 | " Emique | Norfolk | do |
| " 794 | " 25 | " Bessarabia | do | do |
| " 795 | " " | " Hankow | N. Orl's | do |
| " 796 | " " | " Argosy | do | Reval |
| " 797 | " " | Ship Kenburn | Norfolk | L'pool |
| " 798 | " " | S. S. Mark Lane | do | do |
| " 799 | " " | Ship Magnolia | do | do |
| 306—810 | Dec. 5 | Bk. Henrick Ibsen | Galveston | Havre |
| " 811 | " " | " Jacob Aull | N. Orleans | Barcelona |
| " 812 | " " | S. S. Sheburne | Norfolk | L'pool |
| " 813 | " " | Bk. Venice | N. Orleans | Havre |
| 194 | 1882. | | | |
| 306—814 | Dec. 5 | S. S. Ohio | Philada | L'pool |
| " 815 | " " | " Lord Gough | do | do |
| " 816 | " " | Bk. Nellie T. Guest | Savannah | Barcelona |
| " 8 " | " 7 | " do | do | do |
| " 820 | " 9 | S. S. Kate | do | L'pool |
| " 821 | " " | " Hibernian | Balto | do |
| " 822 | " " | " Dorsett | Savannah | do |
| " 823 | " " | " Abyssinia | N. York | do |
| " 825 | " 12 | Bk. Keswick | Norfolk | do |
| " 826 | " " | S. S. Oranmore | Balto | do |
| " 827 | " " | Bk. Sagona | Charleston | do |
| " 828 | " " | S. S. Standard | West Point | do |
| " 816½ | " " | Bk. Nellie T. Guest | Savannah | Barcelona |
| " 835 | " 22 | " Tamora | Galveston | L'pool |
| " 836 | " " | S. S. Carmona | New Orleans | do |
| " 837 | " " | " Deepdale | Galveston | do |
| " 838 | " " | " Roseville | Charleston | Havre |
| " 839 | " " | " Chancellor | N. Orl's | do |
| 196 | 1882. | | | |
| 306—840 | Dec. 22 | S. S. Liscard | West Point | L'pool |
| 841 | " " | " Elpis | do | do |
| | 1883. | | | |
| 847 | Jan'y 2 | S. S. Cydonia | Savannah | Barcelona |
| 848 | " " | " Royal Minstrel | Charleston | do |
| 849 | " " | " Swiftsure | Savannah | do |
| 850 | " " | Bk. Vasa | Charleston | Rouen |
| 851 | " " | Ship Anerbid | Norfolk | L'pool |
| 852 | " " | S. S. Deronda | do | do |
| 853 | " " | Ship Peter Young | do | do |
| 854 | " " | S. S. Maritana | Galveston | do |
| 855 | " " | " Benedict | do | do |
| 856 | " " | " Cadoxton | do | Havre |
| 857 | " " | " Vaderland | Philada | Antwerp |
| 858 | " " | " Eclipse | Savannah | Havre |
| 859 | " " | " Katie | Norfolk | L'pool |
| 860 | " " | " Kansas | Boston | do |
| 866 | " 6 | " Mentmore | Balto | do |
| 198 | 1883. | | | |
| 306—867 | Jan'y 6 | S. S. Mississippi | Balto | L'pool |
| 869 | " 11 | " Tower Hill | Norfolk | do |
| 870 | " " | " Glenfruin | N. Orl's | do |
| 871 | " " | " City of Lincoln | do | do |
| 872 | " " | Bk. Prince Rupert | do | Havre |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount, insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| 193 Amounts brought forward | | | | 839 07 | |
| Cotton | 10,000 | | 1/4-5 | 23 75 | |
| Cotton | 682 | | " " | 1 61 | |
| ....do | 300 | | 7/8 " | 2 49 | |
| ....do | 3,202 | | 3/4 " | 22 80 | |
| ....do | 2,138 | | 1/4 " | 5 07 | |
| ....do., additional | 2,266 | | 3/4 " | 16 16 | |
| ....do | 764 | | 3/8 " | 2 72 | |
| ....do | 3,402 | | " " | 12 12 | |
| ....do | 6,192 | | 3/4 " | 44 12 | |
| ....do | 952 | | 3-25 | 21 42 | |
| ....do., f. p. a. E. C | 7,708 | | 13-16-5 | 59 50 | |
| ....do | 10,000 | | 3/4 " | 35 62 | |
| ....do | 4,948 | | 13-16-5 | 38 20 | |
| | | | | 1,124 65 | |
| Cotton | 6,916 | | 1 1/4-5 | 82 14 | |
| ....do | 955 | | " " | 11 34 | |
| ....do | 2,154 | | 13-16 " | 16 63 | |
| ....do | 4,481 | | 1 1/4 " | 53 24 | |
| Forward | | | | 163 35 | |
| 195 Amounts brought forward | | | | 163 35 | |
| Cotton | 382 | | 1/4-5 | 90 | |
| Cotton | 740 | | " " | 1 76 | |
| ....do | 6,516 | | 5/8 " | 38 70 | |
| ....do | | | 1/8 " | 15 48 | |
| ....do | 6,856 | | 1/4 " | 32 58 | |
| ....do | 1,003 | | 1/2 " | 3 58 | |
| ....do | 10,000 | | 5/8 " | 47 50 | |
| ....do | 2,268 | | 3/8 " | 5 40 | |
| ....do | 10,000 | | 3/4 " | 71 25 | |
| ....do | 10,000 | | 1/4 " | 23 75 | |
| ....do | 1,304 | | 7/8 " | 10 84 | |
| ....do | 10,000 | | 3/4 " | 35 62 | |
| ....do | 3,484 | | 7/8 " | 28 97 | |
| ....do., f. p. a. E. C | 820 | | 1 1/4 " | 9 74 | |
| ....do | 5,712 | | 3/4 " | 40 70 | |
| ....do | 4,232 | | 7/8 " | 35 18 | |
| ....do | 6,386 | | 1/2 " | 30 33 | |
| ....do | 8,636 | | 7/8 " | 71 79 | |
| Forward | | | | 667 42 | |
| 197 Amounts brought forward | | | | 667 42 | |
| Cotton | 10,000 | | 1/4-5 | 35 62 | |
| Cotton | 10,000 | | " " | 35 62 | |
| | | | | 738 66 | |
| Cotton | 6 833 | | 5/8-5 | 40 58 | |
| ....do | 7,400 | | " " | 43 94 | |
| ....do | 10,000 | | " " | 59 38 | |
| ....do | 3,073 | | 1 1-10 " | 32 11 | |
| ....do | 3,824 | | 3/4 " | 27 25 | |
| ....do | 3,635 | | 5/8 " | 12 95 | |
| ....do | 3,660 | | 3/4 " | 26 08 | |
| (Incl'd'g coal port), cotton | 146 | | 7/8 " | 1 22 | |
| ....do. do | 7,764 | | " " | 64 54 | |
| ....do | 592 | | 3/4 " | 4 22 | |
| ....do | 3,444 | | 3/8 " | 12 27 | |
| ....do | 1,150 | | 1/2 " | 5 47 | |
| ....do | 10,000 | | 1/2 " | 35 62 | |
| ....do | 4,470 | | 1/4 " | 10 61 | |
| ....do | 7,896 | | 3/8 " | 22 21 | |
| Forward | | | | 398 45 | |
| 199 Amounts brought forward | | | | 398 45 | |
| Cotton | 10,000 | | 1/4-5 | 28 12 | |
| Cotton | 10,000 | | 5/8 " | 35 62 | |
| ....do | 5,520 | | 1 " | 52 44 | |
| ....do | 816 | | " " | 7 76 | |
| ....do | 724 | | 1 1/2 " | 10 32 | |

*Exhibit D—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1883. | | | |
| 306—874 | Jan'y 18 | S. S. Guildford | N. Orl's | L'pool |
| 875 | " " | " Hughenden | Charleston | do. |
| 876 | " " | " Texas | Balto | do. |
| 885 | " 31 | Bk. John Lonway | Savannah | do. |
| 886 | " " | S. S. Sean Fell | Galveston | do. |
| 887 | " " | " London Castle | Norfolk | do. |
| 888 | " " | " Briscoe | N. Orl's | do. |
| 889 | " " | " Vesta | Balto | do. |
| 897 | Feb'y 8 | Bk. Kate Burrill | West Point | L'pool |
| 898 | " " | S. S. Mentmore | Balto | do. |
| 906 | " 21 | Bk. Kate Burrill | West Point | do. |
| 907 | " " | S. S. Adriatic | N. York | do. |
| 908 | " " | " Nessmore | Balto | do. |
| 200 | | | | |
| | 1883. | | | |
| 306—909 | Feb'y 21 | S. S. Catalonia | N. York | L'pool |
| 914 | " 28 | " City of Canterburg | N. Orl's | do. |
| 915 | " " | Ship Euphemia | Norfolk | do. |
| 916 | " " | S. S. Ontario | Balto. | do. |
| 917 | " " | Bk. Wacissa | Charleston | do. |
| 918 | " " | S. S. Spain | N. York | do. |
| 925 | M'ch 2 | Ship Wm. Law | Norfolk | L'pool |
| 927 | " 8 | S. S. Royal Standard | Charleston | do. |
| 928 | " " | " Marcea | Savannah | do. |
| 943 | " 28 | Bk. Minnie Gordon | do. | do. |
| 944 | " " | " Clandeboye | West Point | do. |
| 945 | " " | " Colin Archer | Galveston | do. |
| 946 | " " | Ship Gustav Adolph | N. Orl's | Reval |
| 947 | " " | S. S. Pavonia | N. York | L'pool |
| 948 | " " | " Cella | Galveston | do. |
| 949 | " " | " Oranmore | Balto | do. |
| 202 | | | | |
| | 1883. | | | |
| 306—950 | M'ch 28 | Bk. Kate Cann | Norfolk | L'pool |
| 951 | " " | Ship Edgar | Savannah | Reval |
| 954 | Apr. 7 | S. S. Mississippi | Baltimore | L'pool |
| 955 | " " | " Zeeland | Philada | Antwerp |
| 956 | " " | " Ontario | Balto | L'pool |
| 957 | " " | " Lord Clive | Philada | do. |
| 958 | " " | " Norseman | Boston | do. |
| 971 | " 11 | " Ontario | Balto | do. |
| 981 | " 20 | " Br. Crown | Philada | do. |
| 982 | " " | " Parisian | Balto | do. |
| 983 | " " | " Switzerland | N. York | Antwerp |
| 268—926 | " " | Bk. Russell | Galveston | L'pool |
| 1012 | May 10 | S. S. Alaska | N. York | L'pool |
| 1013 | " " | Bk. H. B. Cann | Norfolk | do. |
| 1014 | " " | S. S. Republic | N. York | do. |
| 204 | | | | |
| | 1883. | | | |
| 306—1015 | May 10 | Ship J. C. Robertson | Norfolk | L'pool |
| 1016 | " " | S. S. Oranmore | Balto | do. |
| 1017 | " " | " Parisian | do. | do. |
| 1034 | " 21 | " Dupuy de Lorne | N. Orl's | Havre |
| 1041 | " 23 | Ship Lord Canning | N. York | L'pool |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Cotton | 3,490 | | 1-5 | 33 15 | |
| ....do | 6,037 | | 1/4 " | 28 68 | |
| ....do | 5,023 | | 1/2 " | 14 13 | |
| ....do | 5,670 | | 1/2 " | 47 13 | |
| ....do | 8,124 | | 3/4 " | 57 88 | |
| ....do | 10,000 | | 1/4 " | 35 62 | |
| ....do | 2,640 | | 1/2 " | 18 82 | |
| ....do | 5,920 | | 1/4 " | 14 06 | |
| | | | | 782 18 | |
| Cotton | 9,800 | | 1-5 | 93 10 | |
| ....do | 10,000 | | 3/8-25 | 28 12 | |
| ....do | 200 | | 1-5 | 1 90 | |
| ....do | 2,766 | | 1/4 " | 6 56 | |
| ....do | 5,077 | | " " | 12 06 | |
| Forward | | | | 141 74 | |
| 201 Amounts brought forward | | | | 141 74 | |
| Cotton | 4,592 | | 1/4-5 | 10 91 | |
| Cotton | 10,000 | | 3/4 " | 71 25 | |
| ....do | 136 | | " " | 96 | |
| ....do | 1,909 | | 3/8-25 | 5 36 | |
| ....do | 2,294 | | 1/8-5 | 19 07 | |
| ....do | 7,107 | | 1/4 " | 16 88 | |
| | | | | 266 17 | |
| Cotton | 10,000 | | 3/4-5 | 71 25 | |
| ....do | 2,326 | | 1/2 " | 11 05 | |
| ....do | 1,421 | | 1/2 " | 6 75 | |
| ....do | 7,252 | | 13-16-25 | 44 19 | |
| ....do | 10,000 | | 5/8-5 | 59 38 | |
| ....do | 2,463 | | 1 5-16-25 | 24 24 | |
| ....do | 6,980 | | 2 1/2-5 | 165 78 | |
| ....do | 10,000 | | 1/4 " | 23 75 | |
| ....do | 570 | | 1 " | 5 42 | |
| ....do | 1,846 | | 3/8-25 | 5 19 | |
| Forward | | | | 417 | |
| 203 Amounts brought forward | | | | 417 | |
| Cotton | 3,805 | | 5/8-5 | 22 60 | |
| Cotton | 10,000 | | 2 " | 190 | |
| | | | | 629 60 | |
| Cotton | 7,148 | | 3/4-5 | 20 10 | |
| ....do | 4,160 | | " " | 14 82 | |
| ....do | | | 3/8-25 | | |
| ....do | 1,685 | | 3/4-5 | 4 00 | |
| ....do | 2,396 | | " " | 5 70 | |
| ....do | 490 | | 3/8-25 | 1 38 | |
| ....do | 8,354 | | 3/4-5 | 19 84 | |
| ....do | 10,000 | | " " | 23 75 | |
| ....do | 1,028 | | 3/8-5 | 3 67 | |
| ....do., additional prem | 10,000 | | 3/4 | 75 00 | |
| | | | | 168 26 | |
| Cotton | 10,000 | | 1/4 | 23 75 | |
| ....do | 4,614 | | 1/8 | 27 40 | |
| ....do | 5,560 | | 1/4 | 13 20 | |
| Forward | | | | 64 35 | |
| 205 Amounts brought forward | | | | 64 35 | |
| Cotton | 2,162 | | 3/8 | 12 83 | |
| Cotton | 8,000 | | 1/4 | 19 | |
| ....do | 10,000 | | " | 23 75 | |
| ....do | 4,907 | | 3/8 | 29 14 | |
| ....do., f. p. a. E. C | 9,054 | | 11.16 | 46 68 | |
| | | | | 195 75 | |

*Exhibit D—*

| Number. | Date. | Name of conveyance. | From— | To— |
|---|---|---|---|---|
| | 1883. | | | |
| 306—1101 | July 10 | S. S. Britannic | N. York | L'pool |
| 1102 | " " | " Lord Clive | Philada | do |
| 1113 | June 15 | " Hanoverian | Balto | do |
| 1114 | " " | " Paronia | N. York | do |
| 1126 | Aug. 8 | S. S. Oranmore | Balto | L'pool |
| 1127 | " " | " Lord Clive | Philada | do |
| 206 | | | | |
| | 1883. | | | |
| 306—1144 | Sept. 1 | S. S. Abyssinia | N. York | L'pool |
| 1145 | " " | " Helvetia | do | do |
| 1146 | " " | " Nessmore | Balto | do |
| 1147 | " " | " Pavonia | N. York | do |
| 1157 | " 20 | " Timsah | Galveston | Havre |
| 1158 | " " | " Lord Clive | Philada | L'pool |
| 1167 | Oct. 8 | S. S. Bernard Hall | Balto | L'pool |
| 1168 | " " | " Alava | do | do |
| 1169 | " 10 | " Tunis | Galveston | Havre |
| 1179 | " 16 | " Jenny Otto | do | do |
| 1180 | " " | " Wolviston | Charleston | do |
| 1183 | " 20 | " Nantes | N. Orl's | L'pool |
| 1184 | " " | " Northern | do | Havre |
| 1185 | " " | " Marseilles | do | do |
| 1187 | " 26 | Bk. Neptune | Charleston | Barcelona |
| 1188 | " 31 | S. S. Athabasca | N. Orl's | L'pool |
| 208 | | | | |
| | 1883. | | | |
| 306—1189 | Oct. 31 | S. S. Neto | Galveston | Havre |
| 1190 | " " | " Havre | N. Orleans | do |
| 1201 | Nov. 9 | S. S. Louise H | Galveston | L'pool |
| 1202 | " " | " Bordeaux | N. Orl's | Havre |
| 1203 | " " | " Cubana | Norfolk | L'pool |
| 1207 | " 14 | " City of N. York | N. Orl's | do |
| 1208 | " " | " Sportsman | Galveston | do |
| 1209 | " " | " Vaderland | Philada | Antwerp |
| 1210 | " " | " Furnessia | N. York | L'pool |
| 1211 | " " | " Phœnix | Galveston | do |
| 1212 | " " | " Lady Armstrong | N. Orl's | Havre |
| 1213 | " " | " Wyoming | N. York | L'pool |
| 1214 | " " | " Fern Holme | Norfolk | do |
| 1220 | " 23 | Ship Thos. Lord | N. Orl's | Havre |
| 1221 | " " | S. S. Ealing | Savannah | L'pool |
| 1222 | " " | " King's Cross | West Point | do |
| 210 | | | | |
| | 1883. | | | |
| 306—1226 | Nov. 26 | S. S. Nessmore | Balto | L'pool |
| 1235 | Dec. 8 | S. S. Waesland | N. York | Antwerp |
| 1236 | " " | " Britannic | do | L'pool |
| 1237 | " " | " Deepdale | Galveston | do |
| 1238 | " " | " Palestine | Boston | do |
| 1239 | " " | " Kansas | do | do |
| 1240 | " " | " Enrique | Balto | do |
| 1241 | " " | " Apollo | Savannah | do, Barcelona |
| 1242 | " " | " Emiliano | Balto | do |
| 1245 | " 22 | " Panama | N. Orl's | Havre |
| 1246 | " " | " Volo | Galveston | L'pool |
| 1247 | " " | Ship Mary L. Burrill | Norfolk | do |
| 1248 | " " | S. S. Hugo | do | do |
| 1249 | " " | " Nubian | do | do |
| 1250 | " " | " Effective | Galveston | do |
| 1251 | " " | " Carolina | Norfolk | do |

Continued.

| Risk. | Amount, gold or foreign currency. | Amount insured, U. S. currency. | Rate. | Premium. | Approved. |
|---|---|---|---|---|---|
| Cotton | 8,704 | | ¼-5 | 20 67 | |
| ....do | 4,529 | | " | 10 75 | |
| ....do | 1,785 | | " | 4 24 | |
| ....do | 10,000 | | " | 23 75 | |
| | | | | 59 41 | |
| Cotton | 3,706 | | ¼-5 | 8 80 | |
| ....do | 3,747 | | " | 7 24 | |
| | | | | 16 04 | |
| 207 Cotton | 5,000 | | ¼-5 | 11 87 | |
| ....do | 1,646 | | " | 3 90 | |
| Cotton | 3,852 | | 3/4-25 | 10 84 | |
| ....do | 2,935 | | 3/8-5 | 6 97 | |
| ....do | 5,000 | | 1.25 | 37 50 | |
| ....do | 636 | | 3/8 " | 1 79 | |
| | | | | 72 87 | |
| Cotton | 5,000 | | 3/8 | 14 06 | |
| ....do | 4,434 | | " | 12 47 | |
| ....do | 5,000 | | 1 1/8 | 42 19 | |
| ....do | 5,000 | | " | 42 19 | |
| ....do | 5,000 | | 5/8 | 23 44 | |
| ....do | 5,000 | | 7/8 | 32 81 | |
| ....do | 5,000 | | " | 32 81 | |
| ....do | 182 | | " | 1 19 | |
| ....do | 5,000 | | 1½ | 56 25 | |
| ....do | 5,000 | | 7/8 | 32 81 | |
| Forward | | | | 290 22 | |
| 209 Amounts brought forward | | | | 290 22 | |
| Cotton | 5,000 | | 1 1/8 | 42 19 | |
| Cotton | 5,000 | | 7/8 | 32 81 | |
| | | | | 365 22 | |
| Cotton | 5,000 | | 7/8 | 32 81 | |
| ....do | 5,000 | | " | 32 81 | |
| ....do | 5,000 | | ½ | 18 75 | |
| ....do | 2,785 | | 7/8 | 18 28 | |
| ....do | 5,000 | | 1 1/8 | 42 19 | |
| ....do | 5,000 | | 3/8 | 14 06 | |
| ....do | 3,411 | | " | 9 60 | |
| ....do | 5,000 | | 1 1/4 | 42 19 | |
| ....do | 5,000 | | 7/8 | 32 81 | |
| ....do | 5,000 | | 3/8 | 14 06 | |
| ....do | 5,000 | | ½ | 18 75 | |
| ....do | 5,000 | | 1¾ | 65 62 | |
| ....do., f. p. a. E. C. | 5,000 | | 9-16 | 21 09 | |
| ....do | 5,000 | | ½ | 18 75 | |
| Forward | | | | 381 77 | |
| 211 Amounts brought forward | | | | 381 77 | |
| Cotton | 5,000 | | 3/8 | 14 06 | |
| | | | | 395 83 | |
| Cotton | 1,733 | | 3/4 | 4 88 | |
| ....do | 806 | | " | 2 27 | |
| ....do | 1,313 | | 1 1/4 | 11 08 | |
| ....do | 392 | | 3/8 | 1 10 | |
| ....do | 291 | | " | 82 | |
| ....do | 5,000 | | " | 14 06 | |
| ....do | 5,000 | | 3/4 | 28 12 | |
| ....do | 5,000 | | 3/8 | 14 06 | |
| ....do | 3,047 | | 7/8 | 20 | |
| ....do | 604 | | 13-16 | 3 68 | |
| ....do | 3,527 | | 1 | 26 45 | |
| ....do | 5,000 | | 1/4 " | 18 75 | |
| ....do | 1,456 | | " | 5 47 | |
| ....do., f. p. a. E. C. | 4,168 | | 1 | 31 26 | |
| ....do | 5,000 | | ½ | 18 75 | |
| | | | | 200 75 | |

212 I hereby certify that I have personally examined and compared the foregoing statements marked "Exhibit D, E. S. H., 10, 21, '84," and that they are in all respects a true and exact copy of the original endorsements under the policies described in the original instruments.

Witness my hand & notarial seal this 21st day of October, 1884.

[SEAL.] (Signed) EDWARD S. HARLAN,
*Notary Public.*

*Affidavit.*

STATE OF PENNSYLVANIA, } *ss:*
*County of Philadelphia,* }

I, William B. Mann, prothonotary of the court of common pleas of said county, do certify that Edward S. Harlan, Esquire, before whom the annexed certificate was made, was at the time of so doing a notary public in and for the county and State aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, said court being a court of record; and that I am well acquainted with the handwriting of the said Edward S. Harlan and verily believe his signature thereto is genuine, and that said certificate purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 21st day of Oct., in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] (Signed) WILLIAM B. MANN,
*Prothonotary.*

213 *Replication. Filed Nov. 28th,* 1884.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

In the Circuit Court of the United States for the Eastern District of Louisiana. In Chancery.

THE HIBERNIA INSURANCE COMPANY, Complainants,
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA, Defendants. } 10647.

The replication of The Hibernia Insurance Company, complainants, to the answer of The Insurance Company of North America, defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these

repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things these repliants are and will be ready to aver and prove as the court here shall direct, and humbly
214 pray as in and by their said bill they have already prayed.

O. B. SANSUM,
*Complainants' Solicitor.*

T. GILMORE & SON,
*For Pl't'fs.*

*Order of Reference. Entered & Filed Nov. 28th,* 1884.

Circuit Court of the United States for the Eastern District of Louisiana, of the November Term, A. D. 1884. In Equity.

THE HIBERNIA INSURANCE COMPANY, Complainants,

*vs.*

THE INSURANCE COMPANY OF NORTH AMERICA, Defendants.

On reading the pleadings in the above cause and on consideration thereof it is ordered that said cause be referred to Albert G. Brice, Esquire, as a master of this court, to take an account of the dealings and transactions of and between the said parties under the several agreements set forth in the complainants' bill, and to state what upon the balance of said account shall appear to be due from either party to the other, and the said master is authorized to state and report to the court any special circumstances needful for explaining said account in his report thereof and the evidence that shall be given before him.

215 And, for the better taking of said accounts, the parties are required to produce before the said master all letters, books, records, protests, documents, and writings which contain any matter, information, or statement or in any manner pertain to or refer to or concern the dealings and transactions aforesaid, and all witnesses shall be examined before said master upon oath *viva voce* or upon interrogatories or by each of said modes as said master may direct, and as to witnesses who shall be out of the jurisdiction of this court, either party may take their depositions orally before an examiner to be appointed by this court, and the said witnesses shall be examined in the presence of the parties or their agents by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, as provided by equity rule 67 of the Supreme Court of the United States.

And all equities and further directions are reserved until the coming in of said report, and the parties are at liberty to apply to the court as occasion may require.

Nov. 28th, 1884.

DON A. PARDEE, *Judge.*

216 *Master's Certificate of Evidence and Admissions. Filed October 21st*, 1885.

Circuit Court of U. S. for East. Dist. of La.

HIBERNIA INS. CO.
*vs.*
INSURANCE CO. OF NORTH AMERICA. } No. 10647.

Master's certificate.

I certify that the above-entitled cause was opened before me on the 22nd day of Jan'y, 1885, at my office, in the city of New Orleans; that the complainant was represented by O. B. Sansum, Esq., and respondent by E. A. Sabourin, Esq.; that the complainant there offered in evidence certain policies of insurance made by complainant as follows: Policy 268, dated New Orleans, Oct. 30th, 1880, to Charles Platt, Jr., for account of whom it may concern; policy 277, dated April 14th, 1881, issued to respondent, with the application therefor signed by Wm. A. Platt; policy 296, dated Nov. 14th, 1881, issued to respondent, with the application therefor signed by Wm. A. Platt; policy 297, dated New Orleans, Nov. 9th, '81, to respondent, with the application therefor signed by Wm. A. Platt; policy 306, dated New Orleans, Sept. 1st, 1882, to respondent, with the application therefor signed by Wm. A. Platt; that, at the request of both parties, the taking of further testimony in the case was adjourned to 11 o'clock, Feb'y 24th, 1885, at the Continental Hotel, in the city of Philadelphia, and that subsequently, at the request of both parties, the said adjournment was continued to 11 o'clock on 3rd day of March, 1885, at said Continental Hotel, and that, respondent's solicitor failing to appear at that time, the taking of testimony was adjourned *at* same place *to* 11 o'clock, March 5th, 1885, at which time, both parties being present by their solicitors, the taking of testimony was resumed and continued from day to day until
217 the 13th day of March, 1885, during which time both parties examined witnesses and offered documents and other writings in evidence; that all the testimony of all the witnesses was taken by a stenographer and by him reduced to writing; that it was carefully read over to each of the witnesses, and that such corrections as the several witnesses suggested were made to the testimony of each witness, and that both parties stipulated in writing to waive the signatures of all witnesses to their depositions, and the signatures were thereby waived; that the taking of testimony was finished in Philadelphia March 13th, 1885, and the taking of further testimony was resumed at my office on the 15th April, 1885, and was continued from time to time until both parties announced they had no further testimony to offer; that the witnesses examined on behalf of complainant are Wm. A. Platt, Chas. Platt, Jr., James Prevost, Paul Fourchy, & J. A. Chalaron; that the documents and other writings offered by the complainant, in addition to those

named above, are letters marked A 1 to A 21, inclusive; documents B 1 to B 3, inclusive, and B 6, X 1 to X 12, inclusive, C (5, 7, '85); applications for reinsurance on bark L. E. Cann, ship Matchless, and ship Adam M. Simpson; complainants' check, dated April 28th, 1884, for $7,525.95, to order of respondents and by them endorsed; respondents' letter, dated Feb'y 14th, 1884, to Marshall J. Smith & Co., New Orleans; respondents' letter, dated March 10th, 1884, to same parties, marked "Y;" stipulation, dated March 13th, 1885, signed by both solicitors; copy of a letter, dated March 2nd, '83, by Marshall J. Smith & Co. to Charles Platt, Jr., to which reference is made in letter marked A 4, already identified; that the witnesses examined on behalf of respondents are Charles Platt, Sr., W. J. Carnes, Ferdinand Motz, Ransom B. Fuller, Henry D. Schenard, & Thomas C. Hand, the last five-named witnesses being examined by commission issued out of this court, and documents marked A (March 11th, 1885); B 4 (March 12, 1885); B 5, B 7, B 8, March 12, 1885; D (March 11, 1885); C (March 11th, 1885); that all the admissions and objections made by either party were taken down by the stenographer at the time they were made and are stated and form part of the testimony in the order in which they were made. There was no other evidence and no other objections or exceptions than those stated in the evidence.

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New Orleans, Oct. 20th, 1885.

A. G. BRICE, *Master.*

219 EXHIBIT POLICY 268, OFFERED BY COMPLAINANT.

EXHIBIT 1. C. G., Jr., Com.

Cargo, per vessel.
No. 268.
Sum insured.
$——.

The Hibernia Insurance Company of New Orleans by this policy of insurance do make insurance and cause to be insured Charles Platt, Jr., for account of whom it may concern, lost or not lost, at and from ports in the United States and foreign ports, upon all kinds of lawful goods, merchandise, etc., laden or to be laden on board the good steam or sail vessels, whereof is master for the present voyage —— —— or whoever else shall go for master in the said vessel, beginning the adventure upon the said goods, merchandise, etc., from and immediately following the loading thereof on board of the said vessel at port aforesaid, and so shall continue and endure until the said goods, merchandise, etc., shall be safely landed at port aforesaid; and it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods, merchandise, etc., hereby insured are valued at ——.

Touching the adventures and perils which the said Hibernia Insurance Company of New Orleans is contented to bear and take upon itself in this voyage, they are of the seas, fires, jettisons, pirates, overpowering but not other thieves, barratry (except embezzlement

or theft) of the master (unless the insured be an owner of the vessel) and of mariners, and in case of any loss or misfortune arising from any peril insured against the party insured engages that his, her, or their factors, servants, and assigns shall sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof, to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured and assurers or of their agents in preserving, securing, or saving the property insured in case of danger or disaster shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid or promised to be paid the stipulated consideration for this insurance by the assured or his, her, or their assigns at the rate of ——.

It is also agreed that the insurers shall not be answerable for any expense, damage, or loss which may arise in consequence of seizure or detention for or on account of any trade charged with being illicit or prohibited or any trade in articles contraband of war, whether carried on by the master, mariners, or any other person barratrously or otherwise, unless the insured shall show that the trade charged so to be was not illicit or prohibited. The insurers shall not be answerable for damage to other vessels or property in consequence of collision or running foul, nor for any general average or expenses on account of such damage. The insurers take no risk of embargo or blockade, but in case of a blockade of a port of destination the vessel may proceed to another port not blockaded, the assured paying additional premium therefor corresponding to the existing tariff rates at that time between the original port of destination and the port used, and there end the voyage, and in case of an embargo or blockade of the port of departure the vessel may wait there for the termination of the embargo or blockade, the assured warranting the assurers free from all claim for loss or damage whilst so detained, and also free from particular average for the voyage. The company shall not be made liable for wages or provisions in case of capture, arrest, blockade, embargo, or restraint.

And it is hereby agreed that in cases of general average the insurers shall only be liable under this insurance for the proportion of average due on the sum insured, and if the cargo insured is valued in the statement of average beyond the amount hereby insured the insurers are to pay such part only of the sum assessed as the amount insured bears to such valuation, and the assured shall not have the right to abandon for loss through jettison or forced sales at port of necessity. Goods on deck shall not be made good by general average contribution, except by a charge on the deck-load.

MEMORANDA.—It is also agreed, unless otherwise specially stipulated and endorsed on the policy, that bar, bundle, rod, hoop, or sheet iron, wire of all kinds, tin plates, steel, hardware, not in casks or cases, and machinery shall be warranted by the assured free from any average arising from wet or rust. Salt in bulk, grain of any kind, peas, beans, madder, sumac, wickerware, willow (manufactured or otherwise), straw braid, cut straw, hempen yarn, bags (except

gunny bags), cotton bagging, and other articles used for bags or bagging (except gunny cloth), cars, pleasure and traveling carriages, furniture, family clothing, pictures, paintings, musical instruments, looking-glasses, looking-glass plates, cheese, jerked beef, fish (except pickled fish in casks), hides, fur skins (except in casks), and other skins and peltries, almonds, nuts, fruits (whether dried, preserved, or otherwise), hops, vegetables, sarsaparilla, or other roots, ice, and all other articles perishable in their own nature are warranted free from any average, unless it happen by stranding or collision and amount to twenty per cent. Indian meal, tobacco in bales, tobacco stems, matting, rags, cassia (except cassia in boxes), hemp, flax, salt in bags, palm leaf or manufactures of palm leaf are warranted by the assured free from average under twenty per cent. Leaf tobacco (except in bales), rice, cocoa, saltpetre, gunny bags and gunny cloth, books, paper and paper-hangings, crockery and glassware, cocoa coffee in bags or bulk, pepper in bags, pimento, sugar, flaxseed, and bread are warranted by the assured free from average under ten per cent., and the insurers assume the loss of articles not remaining in specie but actually lost if amounting to the above limitations, and not otherwise, and amounting to at least five per cent. on the whole sum of risk. Should the said vessel on which the goods have been shipped not be heard of within — months from the time she leaves her last port, then she shall be deemed lost, and this company will pay the loss without further delay. The insurer shall not be liable for damage or injury to goods by wet or dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. In case of loss or injury to any part of a machine or vehicle consisting, when complete for sale or use, of several parts the insurers shall only be liable for the cost of the part lost or damaged, unless it shall amount to more than half the insured value of such machine or vehicle. In case of loss of the vessel or a part of the cargo, or of damage to the whole or part thereof, it shall be the duty of the master to forward such parts of the cargo as shall be saved in a fit condition, to be shipped to its port of destination by the best conveyance obtainable at the place where the saved goods may be or at any other place within a reasonable distance, and the enhanced expense thereof, not exceeding the amount insured, shall fall on the insurers in proportion as the insured value bears to the sound. It is agreed that in case of damage to a part of a cargo no sound goods shall on that account be sold, the company not to be answerable for loss or damage by wet or exposure to the elements of goods insured on deck. The company is not liable for breakage nor for leakage on molasses or other liquids unless occasioned by stranding.

Rate.
— per cent.
Premium, $——.
Policy, $——.
$——.

And it is also agreed that if the insured shall have made any other insurance against all or any of the risks hereby insured upon the said premises prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of said prior insurance may be deficient from covering the amount at

risk, and the said insurance company shall return the premium upon so much of the sum by them insured as they shall be exonerated from by such prior insurance, and in case of any insurance upon the said premises subsequent in date to this policy the said insurance company shall, nevertheless, be answerable for the full extent of the sum by them herein insured without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made, and in case of loss such loss to be paid in sixty days after proof of interest in the said property and proof of loss and adjustment, the amount of the premium note and all other sums owing to this company by the said assured, by note or otherwise, due or not due, being first deducted: Provided, That no loss except general average shall in any case be paid unless amounting to five per cent. after deducting proceeds of savings, if any, and exclusive in each case of all charges and expenses of ascertaining and proving the loss. If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return premium for short interest one-tenth part of the premium thereon shall be retained by the assurers.

Manufactured tobacco warranted by the assured free from partial loss unless otherwise stipulated and endorsed on the policy.

Warranted by the assured free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers or of our own Government with others.

This insurance is declared to be on — (see reverse hereof) to the extent of, as interest may appear, —— dollars.

In witness whereof the Hibernia Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New Orleans.

New Orleans, this 13th day of October, A. D. 1880.

[Seal of Insurance.]

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

[Endorsed:] Hibernia Insurance Company. (Special.) Marine. No. 268. Cargo. Charles Platt, Jr. $—, at — per cent. $—. Policy —. $—.

[Endorsed:] Y$^5$, 4, 15, '85.

This policy is limited to the sum of ten thousand ($10,000) dollars upon any one vessel from all ports except from New Orleans, where the limit is hereby agreed to and understood to be five thousand ($5,000) dollars. This policy is not to cover any risk from port or ports to New Orleans. Notice of each shipment to be given to Marshall J. Smith & Co., managers, as soon as known, and amounts declared as soon as ascertained. This policy to be continuous until

cancelled by either party giving twenty (20) days' notice, but without any prejudice to risks pending at the date of cancellation.

(Signed) THOS. F. BRAGG, *Sec'y.*

NEW ORLEANS, LA., *July 1st*, 1883.

From and after this date this policy, No. 268, of the Hibernia Insurance Co. of New Orleans shall apply for five thousand dollars ($5,000) instead of ten thousand dollars ($10,000), as heretofore, on same excess as expressed therein and subject to the same terms and conditions.

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

Filed M'ch, 13, '85.
No. 5. A. G. BRICE, *Master.*

220 EXHIBIT POLICY No. 277, OFFERED BY COMPLAINANTS.

Cargo, per vessel.
No. 277.
Sum insured.
$——.

The Hibernia Insurance Company of New Orleans by this policy of insurance do make insurance and cause to be reinsured Insurance Co. of North America for account of themselves, lost or not lost, at and from La Guayra, Porto Cabello, & Curacoa to port or ports in United States, either direct or via port or ports, upon all kinds of lawful goods, merchandise, etc., laden on board any good steam or sail vessel, whereof is master for the present voyage —— —— or whoever else shall go for master in the said vessel beginning the adventure upon the said goods, merchandise, etc., from and immediately following the loading thereof on board of the said vessel at —— aforesaid, and so shall continue and endure until the said goods, merchandise, etc., shall be safely landed at —— aforesaid; and it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods, merchandise, etc., hereby insured are valued at ——.

Touching the adventures and perils which the said Hibernia Insurance Company of New Orleans is contented to bear and take upon itself in this voyage, they are of the seas, fires, jettisons, pirates, overpowering but not other thieves, barratry (except embezzlement or theft) of the master (unless the insured be an owner of the vessel) and of mariners; and in case of any loss or misfortune arising from any peril insured against the party insured engages that his, her, or their factors, servants, and assigns shall sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof, to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured and assurers or of their agents in preserving, securing, or saving the property insured in case of danger or dis-

aster shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid or promised to be paid the stipulated consideration for this insurance by the assured or his, her, or their assigns at the rate of same as Ins. Co. of North America.

It is also agreed that the insurers shall not be answerable for any expense, damage, or loss which may arise in consequence of seizure or detention for or on account of any trade charged with being illicit or prohibited or any trade in articles contraband of war, whether carried on by the master, mariners, or any other person, barratrously or otherwise, unless the insured shall show that the trade charged so to be was not illicit or prohibited. The insurers shall not be answerable for damage to other vessels or property in consequence of collision or running foul nor for any general average or expenses on account of such damage. The insurers take no risk of embargo or blockade, but in case of a blockade of a port of destination the vessel may proceed to another port not blockaded, the assured paying additional premium therefor corresponding to the existing tariff rates at that time between the original port of destination and the port used, and there end the voyage; and in case of an embargo or blockade of the port of departure the vessel may wait there for the termination of the embargo or blockade, the assured warranting the insurers free from all claim for loss or damage whilst so detained, and also free from particular average for the voyage. The company shall not be made liable for wages or provisions in case of capture, arrest, blockade, embargo, or restraint.

And it is hereby agreed that in case of general average the insurers shall only be liable under this insurance for the proportion of average due on the sum insured, and if the cargo insured is valued in the statement of average beyond the amount hereby insured the insurers are to pay such part only of the sum assessed as the amount insured bears to such valuation, and the assured shall not have the right to abandon for loss through jettison or forced sales at port of necessity. Goods on deck shall not be made good by general average contribution except by a charge on the deck-load.

MEMORANDA.—It is also agreed, unless otherwise specially stipulated and endorsed on the policy, that bar, bundle, rod, hoop, or sheet iron, wire of all kinds, tin plates, steel, hardware, not in casks or cases, and machinery shall be warranted by the assured free from any average arising from wet or rust. Salt in bulk, grain of any kind, peas, beans, madder, sumac, wickerware, willow (manufactured or otherwise), straw braid, cut straw, hempen yarn, bags (except gunny bags), cotton bagging, and other articles used for bags or bagging (except gunny cloth), cars, pleasure and traveling carriages, furniture, family clothing, pictures, paintings, musical instruments, looking-glasses, looking-glass plates, cheese, jerked beef, fish (except pickled fish in casks), hides, fur skins (except in casks), and other skins and peltries, almonds, nuts, fruits (whether dried, preserved, or otherwise), hops, vegetables, sarsaparilla, or other roots, ice, and all other articles perishable in their own nature are war-

ranted free from any average unless it happen by stranding or collision and amount to twenty per cent. Indian meal, tobacco in bales, tobacco stems, matting, rags, cassia (except cassia in boxes), hemp, flax, salt in bags, palm leaf or manufactures of palm leaf are warranted by the assured free from average under twenty per cent. Leaf tobacco (except in bales), rice, cocoa, saltpetre, gunny bags and gunny cloth, books, paper and paper-hangings, crockery and glassware, cocoa coffee in bags or bulk, pepper in bags, pimento, sugar, flaxseed, and bread are warranted by the assured free from average under ten per cent.; and the insurers assume the loss of articles not remaining in specie, but actually lost, if amounting to the above limitations, and not otherwise, and amounting to at least five per cent. on the whole sum of risk. Should the said vessel on which the goods have been shipped not be heard of within — months from the time she leaves her last port, then she shall be deemed lost, and this company will pay the loss without further delay. The insurer shall not be liable for damage or injury to goods by wet or dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. In case of loss or injury to any part of a machine or vehicle consisting when complete for sale or use of several parts the insurers shall only be liable for the cost of the part lost or damaged, unless it shall amount to more than half the insured value of such machine or vehicle. In case of loss of the vessel or a part of the cargo or of damage to the whole or part thereof it shall be the duty of the master to forward such parts of the cargo as shall be saved in a fit condition to be shipped to its port of destination by the best conveyance obtainable at the place where the saved goods may be, or at any other place within a reasonable distance, and the enhanced expense thereof, not exceeding the amount insured, shall fall on the insurers in proportion as the insured value bears to the sound. It is agreed that in case of damage to a part of a cargo no sound goods shall on that account be sold; the company not to be answerable for loss or damage by wet or exposure to the elements of goods insured on deck. The company is not liable for breakage nor for leakage on molasses or other liquids unless occasioned by stranding.

Rate.
— per cent.
Premium, $——.
Policy, $——.
$——.

And it is also agreed that if the insured shall have made any other insurance against all or any of the risks hereby insured upon the said premises prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of said prior insurance may be deficient from covering the amount at risk, and the said insurance company shall return the premium upon so much of the sum by them insured as they shall be exonerated from by such prior insurance; and in case of any insurance upon the said premises subsequent in date to this policy the said insurance company shall nevertheless be answerable for the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received in the same

manner as if no such subsequent insurance had been made; and in case of loss such loss to be paid in sixty days after proof of interest in the said property and proof of loss and adjustment, the amount of the premium note and all other sums owing to this company by the said assured, by note or otherwise, due or not due, being first deducted: Provided, That no loss except general average shall in any case be paid unless amounting to five per cent. after deducting proceeds of savings, if any, and exclusive in each case of all charges and expenses of ascertaining and proving the loss. If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return premium for short interest one-tenth part of the premium thereon shall be retained by the assurers.

Manufactured tobacco warranted by the assured free from partial loss unless otherwise stipulated and endorsed on the policy.

Warranted by the assured free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers or of our own Government with others.

This insurance is declared to be on —. By this policy of reinsurance the Hibernia Insurance Co. of New Orleans agree to reinsure the Insurance Co. of North America on merchandise & specie on & after April 11th, 1881. This policy is to apply to the excess which said Insurance Co. of North America may have on all their various policies over ($60,000) sixty thousand dollars, and to apply *pro rata* with all reinsurances on same excess, but not to exceed ($10,000) ten thousand dollars by any one steam or sail vessel. This policy to be continuous until cancelled by either party giving twenty (20) days' notice, but without any prejudice to risks pending at the date of cancellation. This policy is subject to such risks, valuations, conditions, & mode of settlement as are or may be taken by the said Insurance Co. of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time, as interest may appear, to the extent of —— dollars.

In witness whereof the Hibernia Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New Orleans.

New Orleans, this 14th day of April, A. D. 1881.

[Seal of Insurance.]

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

[Endorsed:] 10647. Hibernia Insurance Company. (Special.) Marine. No. 277. Cargo. $—, at — per cent. $—. Policy —. $—. Filed Nov. 22, 1884. (Signed) E. R. Hunt, clerk.

[Endorsed:] Filed M'ch 13, '85. A. G. Brice, master. No. 1. Y[1], 4, 15, '85.

NEW ORLEANS, LA., *July 1st*, 1883.

From and after this date this policy, No. 277, of the Hibernia Insurance Co. of New Orleans shall apply for five thousand dollars ($5,000) instead of ten thousand dollars ($10,000), as heretofore, on same excess as expressed therein and subject to the same terms and conditions.

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

221 EXHIBIT POLICY No. 296, OFFERED BY COMPLAINANTS.

Cargo, per vessel.
No. 296.
Sum insured.
$——.

The Hibernia Insurance Co. of New Orleans by this policy of insurance do make insurance and cause to be reinsured the Insurance Co. of North America, for account of whom it may concern, lost or not lost, at and from port or ports in the East Indies to port or ports of advice & for discharge in the United States, either direct or via port or ports, liberty of transhipment to include risk of lighterage when such is assumed by the Insurance Co. of N. America upon all kinds of lawful goods, merchandise, etc., laden on board the good vessel or vessels, steamer or steamers, whereof is master for the present voyage —— ——, or whoever else shall go for master in the said vessel, beginning the adventure upon the said goods, merchandise, etc., from and immediately following the loading thereof on board of the said vessel at —— aforesaid, and so shall continue and endure until the said goods, merchandise, etc., shall be safely landed at —— aforesaid; and it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods, merchandise, etc., hereby insured are valued at ——.

Touching the adventures and perils which the said Hibernia Insurance Company of New Orleans is contented to bear and take upon itself in this voyage, they are of the seas, fires, jettisons, pirates, overpowering, but not other thieves, barratry (except embezzlement or theft) of the master (unless the insured be an owner of the vessel) and of mariners; and in case of any loss or misfortune arising from any peril insured against the party insured engages that his, her, or their factors, servants, and assigns shall sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof, to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured and assurers, or of their agents, in preserving, securing, or saving the property insured, in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid or promised to be paid the

stipulated consideration of this insurance by the assured or his, her, or their assigns, at the rate of ——.

It is also agreed that the insurers shall not be answerable for any expense, damage, or loss which may arise in consequence of seizure or detention for or on account of any trade charged with being illicit or prohibited, or any trade in articles contraband of war, whether carried on by the master, mariners, or other person, barratrously or otherwise, unless the insured shall show that the trade charged so to be was not illicit or prohibited. The insurers shall not be answerable for damage to other vessels or property in consequence of collision or running foul, nor for any general average or expenses on account of such damage. The insurers take no risk of embargo or blockade; but in case of a blockade of a port of destination the vessel may proceed to another port not blockaded, the assured paying additional premium therefor corresponding to the existing tariff rates at that time between the original port of destination and the port used and there end the voyage; and in case of an embargo or blockade of the port of departure the vessel may wait there for the termination of the embargo or blockade, the assured warranting the insurers free from all claim for loss or damage whilst so detained, and also free from particular average for the voyage. The company shall not be made liable for wages or provisions in case of capture, arrest, blockade, embargo, or restraint.

And it is hereby agreed that in cases of general average the insurers shall only be liable under this insurance for the proportion of average due on the sum insured; and if the cargo insured is valued in the statement of average beyond the amount hereby insured, the insurers are to pay such part only of the sum assessed as the amount insured bears to such valuation, and the assured shall not have the right to abandon for loss through jettison or forced sales at port of necessity. Goods on deck shall not be made good by general average contribution, except by a charge on the deck load.

MEMORANDA.—It is also agreed, unless otherwise specially stipulated and endorsed on the policy, that bar, bundle, rod, hoop, or sheet iron, wire of all kinds, tin plates, steel, hardware not in casks or cases, and machinery shall be warranted by the assured free from any average arising from wet or rust. Salt in bulk, grain of any kind, peas, beans, madder, sumac, wickerware, willow (manufactured or otherwise), straw braid, cut straw, hempen yarn, bags (except gunny bags), cotton bagging, and other articles used for bags or bagging (except gunny cloth), cars, pleasure and traveling carriages, furniture, family clothing, pictures, paintings, musical instruments, looking-glasses, looking-glass plates, cheese, jerked beef, fish (except pickled fish in casks), hides, fur skins (except in casks), and other skins and peltries, almonds, nuts, fruits (whether dried, preserved, or otherwise), hops, vegetables, sarsaparilla, or other roots, ice, and all other articles perishable in their own nature are warranted free from any average, unless it happen by stranding or collision and amount to twenty per cent., Indian meal, tobacco in bales, tobacco stems, matting, rags, cassia (except cassia in boxes), hemp,

flax, salt in bags, palm leaf or manufactures of palm leaf are warranted by the assured free from average under twenty per cent.; leaf tobacco (except in bales), rice, cocoa, saltpetre, gunny bags and gunny cloth, books, paper and paper-hangings, crockery, and glassware, cocoa coffee in bags or bulk, pepper in bags, pimento, sugar, flaxseed, and bread are warranted by the assured free from average under ten per cent.; and the insurers assume the loss of articles not remaining in specie, but actually lost, if amounting to the above limitations and not otherwise, and amounting to at least five per cent. on the whole sum of risk. Should the said vessel on which the goods have been shipped not be heard of within — months from the time she leaves her last port, then she shall be deemed lost, and this company will pay the loss without further delay. The insurer shall not be liable for damage or injury to goods by wet or dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. In case of loss or injury to any part of a machine or vehicle, consisting, when complete for sale or use, of several parts, the insurers shall only be liable for the cost of the part lost or damaged, unless it shall amount to more than half the insured value of such machine or vehicle. In case of loss of the vessel or a part of the cargo or of damage to the whole or part thereof, it shall be the duty of the master to forward such parts of the cargo as shall be saved in a fit condition to be shipped to its port of destination by the best conveyance obtainable at the place where the saved goods may be or at any other place within a reasonable distance, and the enhanced expense thereof, not exceeding the amount insured, shall fall on the insurers in proportion as the insured value bears to the sound. It is agreed that in case of damage to a part of a cargo no sound goods shall on that account be sold; the company not to be answerable for loss or damage by wet or exposure to the elements of goods insured on deck. The company is not liable for breakage nor for leakage on molasses or other liquids unless occasioned by stranding.

Rate.
— per cent.
Premium, $——.
Policy, $——.
$——.

And it is also agreed that if the insured shall have made any other insurance against all or any of the risks hereby insured upon the said premises prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of said prior insurance may be deficient from covering the amount at risk; and the said insurance company shall return the premium upon so much of the sum by them insured as they shall be exonerated from by such prior insurance; and in case of any insurance upon the said premises subsequent in date to this policy the said insurance company shall nevertheless be answerable for the full extent of the sum by them herein insured without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made; and in case of loss, such loss to be paid in sixty days after proof of interest in the said property and proof of loss and adjustment; the amount

of the premium note and all other sums owing to this company by the said assured by note or otherwise, due or not due, being first deducted: Provided, That no loss, except general average, shall in any case be paid unless amounting to five per cent. after deducting proceeds of savings, if any, and exclusive in each case of all charges and expenses of ascertaining and proving the loss. If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return premium for short interest one-tenth part of the premium thereon shall be retained by the assurers.

Manufactured tobacco warranted by the assured free from partial loss, unless otherwise stipulated and endorsed on the policy.

Warranted by the assured free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers or out of our own Government with others.

This insurance is declared to be on merchandise, as per reverse, to the extent of ten thousand $\frac{00}{100}$ dollars.

In witness whereof the Hibernia Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New Orleans.

New Orleans, this 14th day of November, A. D. 1881.

[Seal of Insurance.]

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

To apply to the excess which the said company may have on all their various policies over ($50,000) fifty thousand dollars, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed ten thousand ($10,000) dollars. This policy may be cancelled by either party giving notice to that effect, but without any prejudice to risks pending at the date of cancellation. This policy is subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said insurance Co. of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time. Returns to be sent to Marshall J. Smith & Co., in New Orleans.

(Signed) THOS. F. BRAGG, *Sec'y.*

[Endorsed:] 10647. Hibernia Insurance Company. (Special.) Marine. No. 296. Cargo. Insurance Co. of N. America. Mdse. at & from port of ports of the East Indies. Filed Nov. 22, 1884. (Signed) E. R. Hunt, clerk.

[Endorsed:] Filed M'ch 13, '85. A. G. Brice, master. No. 2. Y², 4, 15, '85.

NEW ORLEANS, LA., *July 1st*, 1883.

From and after this date this policy, No. 296, of the Hibernia Insurance Co. of New Orleans shall apply for five thousand dollars ($5,000) instead of ten thousand dollars ($10,000), as heretofore, on

same excess as expressed therein and subject to the same terms and conditions.

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

Endorsement on policy No. 296, Hibernia Ins. Co.

PHILADELPHIA, *June 18th*, 1883.

Reinsurance is wanted by the Insurance Company of North America for $—— on —— on board of the V. or V. at and from ——.

It is hereby understood & agreed that on & after date the within policy shall cover as follows:

From Bombay & (or) ports east thereof to port or ports of destination in the United States direct or via port or ports, with liberty of transhipment, including war risk & lighterage, when covered by Ins. Co. of No. America cancellation clause. To apply to the excess which the said company may have on all their various policies on vessel, freight, cargo, or profits, including specie or treasure, over $——, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed $——. This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time. To remain open until particulars are given in. Premium, —— per cent.; less —— per cent., $——. When and where built, ——; number of decks, ——; tonnage, ——; rate, ——.

(Signed) THOS. F. BRAGG, *Secretary.*

To the Hibernia Ins. Co.

222 EXHIBIT POLICY NO. 297, OFFERED BY COMPLAINANTS.

Cargo, per vessel.
No. 297.
Sum insured.
$——.

The Hibernia Insurance Company of New Orleans by this policy of insurance do make insurance and cause to be reinsured the Insurance Co. of North America, for account of whom it may concern, lost or not lost, at and from port or ports in the West India Islands to port or ports in the United States, direct or via port or ports, liberty of transhipment to include risk of lighterage when such is assumed by the Insurance Co. of North America upon all kinds of lawful goods, merchandise, etc., laden on board the good vessel or vessels, steamer or steamers, whereof is master for the present voyage —— —— or whoever else shall go for master in the said vessel, beginning the adventure upon the said goods, merchandise, etc., from and immediately following the loading thereof on board of the said vessel at —— aforesaid, and so shall continue and endure until the said goods, merchandise, etc., shall be safely landed at —— aforesaid; and it shall and may be lawful for the said vessel in her

voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods, merchandise, etc., hereby insured are valued at ——.

Touching the adventures and perils which the said Hibernia Insurance Company of New Orleans is contented to bear and take upon itself in this voyage, they are of the seas, fires, jettisons, pirates, overpowering but not other thieves, barratry (except embezzlement or theft) of the master (unless the insured be an owner of the vessel) and of mariners, and in case of any loss or misfortune arising from any peril insured against the party insured engages that his, her, or their factors, servants, and assigns shall sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof, to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured and assurers or of their agents in preserving, securing, or saving the property insured in case of danger or disaster shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid or promised to be paid the stipulated consideration for this insurance by the asssured or his, her, or their assigns at the rate of ——.

It is also agreed that the insurers shall not be answerable for any expense, damage, or loss which may arise in consequence of seizure or detention for or on account of any trade charged with being illicit or prohibited or any trade in articles contraband of war, whether carried on by the master, mariners, or any other person, barratrously or otherwise, unless the insured shall show that the trade charged so to be was not illicit or prohibited. The insurers shall not be answerable for damage to other vessels or property in consequence of collision or running foul, nor for any general average or expenses on account of such damage. The insurers take no risk of embargo or blockade, but in case of a blockade of a port of destination the vessel may proceed to another port not blockaded, the assured paying additional pemium therefor corresponding to the existing tariff rates at that time between the original port of destination and the port used, and there end the voyage; and in case of an embargo or blockade of the port of departure the vessel may wait there for the termination of the embargo or blockade, the assured warranting the insurers free from all claim for loss or damage whilst so detained, and also free from particular average for the voyage. The company shall not be made liable for wages or provisions in case of capture, arrest, blockade, embargo, or restraint.

And it is hereby agreed that in cases of general average the insurers shall only be liable under this insurance for the proportion of average due on the sum insured, and if the cargo insured is valued in the statement of average beyond the amount hereby insured the insurers are to pay such part only of the sum assessed as the amount insured bears to such valuation, and the assured shall not have the right to abandon for loss through jettison or forced

sales at port of necessity. Goods on deck shall not be made good by general average contribution, except by a charge on the deck-load.

MEMORANDA.—It is also agreed, unless otherwise specially stipulated and endorsed on the policy, that bar, bundle, rod, hoop, or sheet iron, wire of all kinds, tin plates, steel, hardware, not in casks or cases, and machinery shall be warranted by the assured free from any average arising from wet or rust. Salt in bulk, grain of any kind, peas, beans, madder, sumac, wickerware, willow (manufactured or otherwise), straw braid, cut straw, hempen yarn, bags (except gunny bags), cotton bagging, and other articles used for bags or bagging (except gunny cloth), cars, pleasure and traveling carriages, furniture, family clothing, pictures, paintings, musical instruments, looking-glasses, looking-glass plates, cheese, jerked beef, fish (except pickled fish in casks), hides, fur skins (except in casks), and other skins and peltries, almonds, nuts, fruits (whether dried, preserved, or otherwise), hops, vegetables, sarsaparilla, or other roots, ice, and all other articles perishable in their own nature are warranted free from any average, unless it happen by stranding or collision and amount to twenty per cent. Indian meal, tobacco in bales, tobacco stems, matting, rags, cassia (except cassia in boxes), hemp, flax, salt in bags, palm leaf or manufacturers of palm leaf are warranted by the assured free from average under twenty per cent. Leaf tobacco (except in bales), rice, cocoa, saltpetre, gunny bags and gunny cloth, books, paper and paper-hangings, crockery and glassware, cocoa coffee in bags or bulk, pepper in bags, pimento, sugar, flaxseed, and bread are warranted by the assured free from average under ten per cent, and the insurers assume the loss of articles not remaining in specie, but actually lost, if amounting to the above limitations, and not otherwise, and amounting to at least five per cent. on the whole sum of risk. Should the said vessel on which the goods have been shipped not be heard of within — months from the time she leaves her last port, then she shall be deemed lost, and this company will pay the loss without further delay. The insurer shall not be liable for damage or injury to goods by wet or dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. In case of loss or injury to any part of a machine or vehicle consisting, when complete for sale or use, of several parts the insurers shall only be liable for the cost of the part lost or damaged, unless it shall amount to more than half the insured value of such machine or vehicle. In case of loss of the vessel or a part of the cargo or of damage to the whole or part thereof it shall be the duty of the master to forward such parts of the cargo as shall be saved in a fit condition to be shipped to its port of destination by the best conveyance obtainable at the place where the saved goods may be or at any other place within a reasonable distance, and the enhanced expense thereof, not exceeding the amount insured, shall fall on the insurers in proportion as the insured value bears to the sound. It is agreed that in case of damage to a part of a cargo no sound goods shall on that ac-

Rate.
— per cent.
Premium, $——.
Policy, $——.
$ ——.

count be sold, the company not to be answerable for loss or damage by wet or exposure to the elements of goods insured on deck. The company is not liable for breakage nor for leakage on molasses or other liquids, unless occasioned by stranding.

And it is also agreed that if the insured shall have made any other insurance against all or any of the risks hereby insured upon the said premises prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of said prior insurance may be deficient from covering the amount at risk; and the said insurance company shall return the premium upon so much of the sum by them insured as they shall be exonerated from by such prior insurance; and in case of any insurance upon the said premises subsequent in date to this policy, the said insurance company shall, nevertheless, be answerable for the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made; and in case of loss such loss to be paid in sixty days after proof of interest in the said property and proof of loss and adjustment, the amount of the premium note and all other sums owing to this company by the said assured, by note or otherwise, due or not due, being first deducted: Provided, That no loss, except general average, shall in any case be paid, unless amounting to five per cent. after deducting proceeds of savings, if any, and exclusive in each case of all charges and expenses of ascertaining and proving the loss. If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return premium for short interest one-tenth part of the premium thereon shall be retained by the assurers.

Manufactured tobacco warranted by the assured free from partial loss, unless otherwise stipulated and endorsed on the policy.

Warranted by the assured free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers or of our own Government with others.

This insurance is declared to be on merchandise, as per reverse, to the extent of ten thousand $\frac{00}{100}$ dollars.

In witness whereof the Hibernia Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New Orleans.

New Orleans, this 9 day of Nov., A. D. 1881.

[Seal of Insurance.]

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

To apply to the excess which the said company may have in all their various policies over fifty thousand ($50,000) dollars, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed ten thousand ($10,000) dollars. This policy may be cancelled by either party giving notice to that effect, but without

prejudice to risks pending at the date of cancellation. This policy is subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Co. of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time. Returns to be sent to Marshall J. Smith & Co., in New Orleans.

(Signed) THOS. F. BRAGG, *Sec'y.*

[Endorsed:] 10647. Hibernia Insurance Company. (Special.) Marine. No. 297. Cargo. Insurance Co. of N. America. Mdse. at & from port or ports in the West India Isl. $—, at — per cent. $—. Policy —. $—. Filed Nov. 22, 1884. (Signed) E. R. Hunt, clerk.
[Endorsed:] Filed M'ch 13, '85. A. G. Brice, master. No. 3. Y$^3$, 4, 15, '85.

NEW ORLEANS, LA., *July 1st*, 1883.

From and after this date this policy, No. 297, of the Hibernia Insurance Co. of New Orleans shall apply for five thousand dollars ($5,000) instead of ten thousand dollars ($10,000), as heretofore, on same excess as expressed therein and subject to the same terms and conditions.

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

Endorsement on policy #297, Hibernia Ins. Co.

PHILADELPHIA, *July 2nd*, 1883.

Reinsurance is wanted by the Insurance Company of North America for $—— on mdse. on board of the V. or V. at and from ——.

It is hereby understood and agreed that on and after date this policy covers cargoes from Demerara to U. S. upon same terms and conditions.

To apply to the excess which the said company may have on all their various policies on vessel, freight, cargo, or profits, including specie or treasure, over $——, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed $——.

This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time.

To remain open until particulars are given in. Premium, — per cent.; less — per cent., $——.

When and where built, ——; number of decks, ——; tonnage, ——; rate, ——.

(Signed) THOS. F. BRAGG, *Secretary.*

To the Hibernia Ins. Co.

223 EXHIBIT POLICY No. 306, OFFERED BY COMPLAINANTS.

Cargo, per vessel.
No. 305.
Sum insured.
$——.

The Hibernia Insurance Company of New Orleans by this policy of insurance do make insurance and cause to be reinsured Insurance Co. of North America, for account of whom it may concern, lost or not lost, at and from port or ports in the United States to ports of advice & for discharge in Europe, either direct or via a port or ports, with liberty of transhipment, to apply to shipment by vessels reported on or after Sept., '82, to include risk of lighterage when such is assumed by Ins. Co. of N. America upon all kinds of lawful goods, merchandise, etc., laden on board the good vessel or vessels, steamer or steamers, whereof is master for the present voyage —— —— or whoever else shall go for master in the said vessel, beginning the adventure upon the said goods, merchandise, etc., from and immediately following the loading thereof on board of the said vessel at —— aforesaid, and so shall continue and endure until the said goods, merchandise, etc., shall be safely landed at —— aforesaid; and it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods, merchandise, etc., hereby insured are valued at ——.

Touching the adventures and perils which the said Hibernia Insurance Company of New Orleans is contented to bear and take upon itself in this voyage, they are of the seas, fires, jettisons, pirates, overpowering but not other thieves, barratry (except embezzlement or theft) of the master (unless the insured be an owner of the vessel) and of mariners, and in case of any loss or misfortune arising from any peril insured against the party insured engages that his, her, or their factors, servants, and assigns shall sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof, to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured and assurers or of their agents in preserving, securing, or saving the property insured in case of danger or disaster shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid or promised to be paid the stipulated consideration for this insurance by the assured or his, her, or their assigns at the rate of same as Insurance Co. of North America.

It is also agreed that the insurers shall not be answerable for any expense, damage, or loss which may arise in consequence of seizure or detention for or on account of any trade charged with being illicit or prohibited or any trade in articles contraband of war, whether carried on by the master, mariners, or any other person, barratrously or otherwise, unless the insured shall show that the trade charged so to be was not illicit or prohibited. The insurers shall not be an-

swerable for damage to other vessels or property in consequence of collision or running foul, nor for any general average or expenses on account of such damage. The insurers take no risk of embargo or blockade, but in case of a blockade of a port of destination the vessel may proceed to another port not blockaded, the assured paying additional premium therefor corresponding to the existing tariff rates at that time between the original port of destination and the port used, and there end the voyage, and in case of an embargo or blockade of the port of departure the vessel may wait there for the termination of the embargo or blockade, the assured warranting the insurers free from all claim for loss or damage whilst so detained, and also free from particular average for the voyage. The company shall not be made liable for wages or provisions in case of capture, arrest, blockade, embargo, or restraint.

And it is hereby agreed that in cases of general average the insurers shall only be liable under this insurance for the proportion of average due on the sum insured, and if the cargo insured is valued in the statement of average beyond the amount hereby insured the insurers are to pay such part only of the sum assessed as the amount insured bears to such valuation, and the assured shall not have the right to abandon for loss through jettison or forced sales at port of necessity. Goods on deck shall not be made good by general average contribution except by a charge on the deck-load.

MEMORANDA.—It is also agreed, unless otherwise specially stipulated and endorsed on the policy, that bar, bundle, rod, hoop, or sheet iron, wire of all kinds, tin plates, steel, hardware, not in casks or cases, and machinery shall be warranted by the assured free from any average arising from wet or rust. Salt in bulk, grain of any kind, peas, beans, madder, sumac, wickerware, willow (manufactured or otherwise), straw braid, cut straw, hempen yarn, bags (except gunny bags), cotton bagging, and other articles used for bags or bagging (except gunny cloth), cars, pleasure and traveling carriages, furniture, family clothing, pictures, paintings, musical instruments, looking-glasses, looking-glass plates, cheese, jerked beef, fish (except pickled fish in casks), hides, fur skins (except in casks), and other skins and peltries, almonds, nuts, fruits (whether dried, preserved, or otherwise), hops, vegetables, sarsaparilla, or other roots, ice, and all other articles perishable in their own nature are warranted free from any average, unless it happened by stranding or collision and amount to twenty per cent. Indian meal, tobacco in bales, tobacco stems, matting, rags, cassia (except cassia in boxes), hemp, flax, salt in bags, palm leaf or manufactures of palm leaf are warranted by the assured free from average under twenty per cent. Leaf tobacco (except in bales), rice, cocoa, saltpetre, gunny bages and gunny cloth, books, paper and paper-hangings, crockery and glassware, cocoa coffee in bages or bulk, pepper in bags, pimento, sugar, flaxseed, and bread are warranted by the assured free from average under ten per cent., and the insurers assume the loss of articles not remaining in specie, but actually lost, if amounting to the above limitations, and not otherwise, and amounting to at least five per cent. on the whole sum of risk. Should the said vessel on which the goods have been shipped

not be heard of within — months from the time she leaves her last port, then she shall be deemed lost, and this company will pay the loss without further delay. The insurer shall not be liable for damage or injury to goods by wet or dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. In case of loss or injury to any part of a machine or vehicle consisting, when complete for sale or use, of several parts the insurers shall only be liable for the cost of the part lost or damaged, unless it shall amount to more than half the insured value of such machine or vehicle. In case of loss of the vessel or a part of the cargo or of damage to the whole or part thereof it shall be the duty of the master to forward such parts of the cargo as shall be saved in a fit condition to be shipped to its port of destination by the best conveyance obtainable at the place where the saved goods may be or at any other place within a reasonable distance, and the enhanced expense thereof, not exceeding the amount insured, shall fall on the insurers in proportion as the insured value bears to the sound. It is agreed that in case of damage to a part of a cargo no sound goods shall on that account be sold, the company not to be answerable for loss or damage by wet or exposure to the elements of goods insured on deck. The company is not liable for breakage nor for leakage on molasses or other liquids unless occasioned by stranding.

Rate.
— per cent.
Premium, $——.
Policy, $——.
$——.

And it is also agreed that if the insured shall have made any other insurance against all or any of the risks hereby insured upon the said premises prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of said prior insurance may be deficient from covering the amount at risk, and the said insurance company shall return the premium upon so much of the sum by them insured as they shall be exonerated from by such prior insurance, and in case of any insurance upon the said premises subsequent in date to this policy the said insurance company shall, nevertheless, be answerable for the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made, and in case of loss such loss to be paid in sixty days after proof of interest in the said property and proof of loss and adjustment, the amount of the premium note and all other sums owing to this company by the said assured, by note or otherwise, due or not due, being first deducted: Provided, That no loss, except general average, shall in any case be paid, unless amounting to five per cent. after deducting proceeds of savings, if any, and exclusive in each case of all charges and expenses of ascertaining and proving the loss. If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. In all cases of return premium for

short interest one-tenth part of the premium thereon shall be retained by the assurers.

Manufactured tobacco warranted by the assured free from partial loss unless otherwise stipulated and endorsed on the policy.

Warranted by the assured free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers or of our own Government with others.

This insurance is declared to be on cotton, to apply to the excess which the said company may have on all their various policies over seventy thousand ($70,000) dollars, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed ten thousand ($10,000) dollars. This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Co. of North America, notwithstanding anything to the contrary in the within policy, & payment of loss to be made at the same time.

It is understood that the Insurance Company of North America may reduce their line below $70,000, at their discretion, to the extent of ten thousand $\frac{0\,0}{1\,0\,0}$ dollars.

In witness whereof the Hibernia Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New Orleans.

New Orleans, this 1st day of September, A. D. 1882.

[Seal of Insurance.]

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

[Endorsed:] 10647. Hibernia Insurance Company. (Special.) Marine. No. 306. Cargo. Insurance Co. of North America. Cotton. Port or ports in the U. S. to port or ports in Europe with liberty of transhipment. $—, at — per cent. $—. Policy —. $—. Filed Nov. 22, 1884. (Signed) E. R. Hunt, clerk.

[Endorsed:] Filed M'ch 13, '85. (Signed) A. G. Brice, master. No. 4. Y⁴, 4, 15, '85.

NEW ORLEANS, LA., *July 1st*, 1883.

From and after this date this policy, No. 306, of the Hibernia Insurance Co. of New Orleans shall apply for five thousand dollars ($5,000) instead of ten thousand dollars ($10,000), as heretofore, on same excess as expressed therein and subject to the same terms and conditions.

(Signed) JOHN HENDERSON, *President.*
(Signed) THOS. F. BRAGG, *Secretary.*

224 *Testimony of Wm. A. Platt, Offered by Complainants.*

Circuit Court of the United States for the Eastern District of Louisiana, Fifth Circuit. In Equity.

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE CO. OF NORTH AMERICA. } No. 10647.

Proceedings before Hon. A. G. Brice, master.

PHILADELPHIA, *March 5th*, 1885.

Present: Mr. O. B. Sansum, for complainants; Mr. E. Sabourin, for defendants.

WILLIAM A. PLATT, having been duly sworn, was examined as follows:

By Mr. SANSUM:

Q. You are an officer of the defendants?
A. I am; yes, sir.
Q. What position do you hold?
A. Second vice-president.
Q. What was your position in the company on or about the 11th of October, 1880?
A. Marine clerk. October, 1880, I think was the month in which I was made the second vice-president of the company.
Q. Prior to that time had you been the marine clerk?
A. Yes, sir.

225 Q. Since you have held the position of second vice-president what has your special duty been with respect to the marine business of the company?
A. General supervision of the marine business.
Q. You are familiar, then, with the transactions of the company in marine matters from that date?
A. Entirely.
Q. Do you know Mr. Charles Platt, Jr.—your brother?
A. I do.
Q. Do you know whether Mr. Charles Platt, Jr., did anything in the way of procuring reinsurances for the Insurance Company of North America about that time or since?
A. I do not.
Q. Have you a record of the insurances that were made by the defendants upon the ship "Obi" on her voyage in the summer of 1881 from the East Indies to Boston, and also of the reinsurances?
A. We have the applications that it is the custom for our agents to send to the home office.
Q. Where was that risk taken?
A. I cannot speak from memory. I would have to refer — the books to ascertain. (Witness produces books.) Those are the ap-

plications (referring to papers), which are copies of the application signed by the parties insured, and which are sent on as daily reports—the daily reports of the risks taken.

Q. That is to say, those are the reports of your agents at Boston?

226 A. Exactly.

Q. They are sent to you by them?

A. Yes; daily.

Q. They keep the originals and send you copies?

A. Yes, sir; exactly—not of the policies, but simply of the applications.

Q. One of these is dated June 7th and the other October 18th, 1881?

A. Yes, sir.

Q. Were the cargoes or the two separate risks all taken at one port?

A. If my memory serves me, the one on which you see in red "particulars" is the completion of the open amount which the other represents. For instance, one is "about" and the other is "closed" when the particulars are known by the assured.

Q. Your answer, then, as I understand it, is this: That the application, dated June 7th, 1881, for $45,000 was finally corrected by that of October 18th, 1881?

A. Not corrected; completed. It was not corrected in any way.

Q. Do I understand you that they were for two separate amounts?

A. No; no amount was stated. If you will allow me to explain it in my own words I will do so. When the assured, for instance, come to our office in Boston, they say, "We have a shipment

227 of sugar on the ship 'Obi' from the Philippine Islands to Boston." Our agents say, "What will be the probable amount on that cargo?" That is for the protection of the Insurance Company of North America. They say, "About $45,000." They are covered under an open policy which covers every shipment. They are not obliged to report the amount to our agents, but they do it for our convenience simply.

Q. Then you have a binding contract with them to cover all their shipments?

A. Yes, sir.

Q. So they report in the first instance $45,000?

A. No; they report in the first instance an open amount on sugar. They do not know exactly the amount.

Q. I find upon the first application a sum of $45,000 named.

A. No; about $45,000. That little mark in front means "about;" that signifies that it is open. It is simply a memorandum.

Q. What do you mean by an open policy? Is — that the amount is left open?

A. No, sir; in saying open I am not speaking of an open policy. I simply say the amount is open—that is to say, no amount is reported. The invoices have not been received by the assured; therefore they cannot give us the exact amount. When they receive their

invoices they declare that much, by the ship "Obi," for in-
228 stance, according to the terms of the open policy.

Q. Then when you use the word- open policy you mean to say that it is a binding contract between the Insurance Company of North America and the assured to hold all their shipments insured?

A. Exactly; yes, sir.

Q. Subject to their reports from time to time, as they may make them?

A. Subject to the receipts of documents by them—certainly.

Q. Please state how much reinsurance was made by the Insurance Company of North America on that risk and when it was made.

A. (Referring to the reinsurance book.) $17,500.

Q. In what companies was it made and how much in each?

A. The Hibernia, $10,000; the Manufacturers' of Boston, $5,000; the Northwestern National, $2,500.

Q. At what date were those secured?

A. November 25th, '81, notice was received by us that the reinsurance had been placed.

Q. Who placed it?

A. Forster & Scull were our agents then in Boston.

Q. Was that the first notice or knowledge that you had of its being placed?

A. Do you mean of reinsurance being placed? In all probability
229 our agents in Boston were instructed to reduce our line of reinsurance on that vessel. No companies were specified, of course, to place it in. I should say that the particulars of the reinsurance were received on the 25th of November, 1881. We probably asked Foster and Scull to effect the reinsurance prior to that date.

Q. Had you any contract open with the Manufacturers' at that time?

A. I cannot remember that we had.

Q. Had you with the Northwestern National?

A. I cannot remember that we had.

Q. Can you trace that and ascertain whether you did or not? I mean any binding contract of insurance.

A. I suppose you mean that policy covering from the East Indies.

Q. State whether you had any open contract with them. When I speak of an open contract I mean whether you had a binding contract with them to cover risks for you.

A. Do I understand your question to be whether we had open contracts or binding contracts with the Manufacturers' Insurance Company and with the Northwestern National in June, when this risk was accepted from the East Indies?

Q. You do.

A. No, sir; we had not.

Q. How soon after this reinsurance was procured for you did you

make any binding contracts with either of the companies last named to reinsure for you?

230 A. The probable amount on the ship "Obi," being about $45,000 and falling under $50,000, would not have come under the open contract that we had with the Manufacturers'. We had a contract with the Manufacturers' at that time covering another excess—an excess of $50,000.

Q. You had a contract with them at that time?

A. Yes; but covering, as I say, the excess of $50,000.

Q. Therefore this risk, you say, did not come within the terms of that contract?

A. No, sir.

Q. Had you any binding contract with the Northwestern National?

A. No, sir; none whatever.

Q. What knowledge or information have you respecting the brig "Budstikken," which was on a voyage, in the month of September, '82, from Jamaica to Montreal?

A. I cannot speak from memory. I have a memorandum here which will give me that information, I think. (Referring to paper.) The risk was accepted in our Montreal agency.

Mr. ROBERT HAMPSON, the agent:

Q. Have you the applications in that case?

A. I have (producing same).

Q. Are these three papers which you exhibit to me three separate applications or one?

A. They are two applications—two risks.

Q. State briefly what those risks are.

231 A. One is an open application, dated September 20th, 1882, under the open policy of Gillespie, Moffatt & Co., reading: "—— dollars on cargo on board of Budstikken," from Jamaica to Montreal. In the corner is the probable amount, just as in the case of the "Obi," where the assured reported that there would be about $35,000; in other words, that the shipment would amount to about $35,000. On the 24th of October, 1882, the particulars of this insurance were given on 170 hogsheads and 391 barrels of sugar, amounting to $18,958. In other words, the completion of the risk was less by some $17,000 than the assured originally thought it would amount to. The other application covers, on advances, $351, dated October 24th, 1882, by the same vessel—same voyage.

Q. What reinsurance was made for the defendant on that vessel for that voyage?

A. When the open application reading "about $35,000" came in from Montreal it was thought prudent to reduce the line to $30,000. Therefore $5,000 reinsurance was placed in the Hibernia.

Q. What date was that placed?

A. It was entered in our reinsurance book September 23rd, 1882. In other words, that must have been the day that we received it.

Q. Where was that made?

232 A. In Philadelphia.

Q. By whom?

A. By the Insurance Company of North America.

Q. Allow me to call your attention now to the barque "Etimologia," which vessel was on a voyage, in the month of October, 1883, from Philadelphia to a port in Europe. Be kind enough to state what insurance the Insurance Company of North America made on her and for whom it was made.

A. I find here another little risk on the ship "Obi" of $1,403. I am, of course, only testifying from these applications before me, and not from our books. It seems to be a small application and is marked "additional." In case of the barque "Etimologia" the application is covering, in the first place, about $40,000 on grain for account of William Bingham & Co., dated October 15th, 1883, with the rate left open. I have the particulars of that application, dated October 22nd, 1883, completing the amount, number of bushels, rate, etc., for $45,500 on 65,750 bushels of wheat. Probably our insurance covered only part of that cargo.

Q. What, if any, reinsurance did you make on that?

A. $10,000 with the Firemen's Fund Insurance Company of San Francisco and the Hibernia Insurance Company of New Orleans—$5,000 each.

Q. Where was that made?

A. I think it was made in Philadelphia, though I cannot
233 speak with certainty. I cannot conveniently ascertain at the present moment.

(Witness requested to report hereafter at his early convenience in answer to said question.)

Q. Where was the risk taken by the Insurance Company of North America?

A. In New York.

Q. What date was the reinsurance made?

A. It was entered in our reinsurance blotter October 23d, 1883.

Q. How soon after the risk was taken by the company?

A. The day after the particulars of insurance were received by the Insurance Company of North America in New York.

Q. How soon did the Insurance Company of North America after the risk was received at New York get knowledge of it?

A. I suppose the next morning. We always get a daily mail.

Q. Had the Insurance Company of North America any open binding contract with the Firemen's Fund?

A. None whatever on such class of business.

Q. Had it on any class of business?

A. I cannot speak from memory. We have many open contracts with a great many different companies.

Q. Can you ascertain that fact?

A. I can, and will report upon it to-morrow to you.

234 Q. Where was the "Etimologia" bound from—Philadelphia or New York?

A. She was bound from Philadelphia to U. K., C., etc., which

stands for United Kingdom, continent, etc.—that is, bound for orders to a direct point in the United Kingdom or continent.

Q. I now direct your attention to the barque "Yorkshire," bound on a voyage from Barbadoes to Montreal in the month of June, 1882, and beg you to state what insurance the defendants made on that vesssl on that voyage, for whom, and to what extent.

A. As far as the applications which I have here show the Insurance Company of North America insured through their New York agency $1,280 on advances on freight for Middleton & Co., under date July 6th, 1882, and $637 on one-half advances for the St. Lawrence Sugar Company, dated July 12th, 1882. A memorandum on this application reads that it is cancelled, and to see Robert Hampson's letter to the Insurance Company of North America, dated December 1st, 1882. Another application is an open application covering about $60,000 on one-half of the shipment of the barque "Yorkshire" for the St. Lawrence Sugar Company, dated June 24th, 1882. Another is the particulars completing the last-named risk and declaring the value to be $51,601, and the particulars are dated July 7th, 1882.

Q. Please state what the defendants' risk was altogether
235 upon the information which you have before you.

A. $52,881, eventually.

Q. Be kind enough to state what reinsurance, if any, was made for the Insurance Company of North America.

A. There was a reinsurance of $5,000 in the Hibernia Insurance Company, dated in the reinsurance blotter June 29th, 1882. There were also further reinsurances of $7,378 in the China Insurance Company (the China Mutual being referred to), $5,533 in the Boylston Insurance Company, $3,690 in the Ocean Insurance Company, $10,000 in the New Orleans Insurance Company, $5,000 in the Mechanics' & Traders' Insurance Company, and $2,500 in the People's Insurance Company. That appears to be all.

Q. How much was the whole amount of reinsurance made for the Insurance Company of North America on that risk?

A. $39,101.

Q. That is including the $5,000 in the Hibernia Insurance Company?

A. Yes, sir.

Q. In what order of dates were these reinsurances made?

A. The reinsurance for the Hibernia was reported to this company as having been made and entered in their blotter June 29th, 1882, but was probably made a long time before that date.

Q. Where was it made?

See corrections in evidence, March 11, '85.

A. In Montreal. When the risk was received in the In-
236 surance Company of North America, the Insurance Company of North America requested their agent at Montreal to reinsure a certain amount. In other words, they predicated their acceptance of the risk on the ability of their agent in Montreal to reinsure, and were not supposed to know anything about the reinsur-

ance placed on this cargo until it was made and reported to them, as is usual in the marine insurance business.

Q. For whom did the Insurance Company of North America make all that insurance in Montreal—for what parties?

A. The Insurance Company of North America made no reinsurance in Montreal.

Q. I am not speaking of reinsurance, but of original insurance.

A. It was made for the St. Lawrence Sugar Company on the cargo, and the insurance on advances was made for Middleton & Co., in New York.

Q. Did the Insurance Company of North America have an open binding contract with the parties, or any of them, for whom it was made, binding upon all the risks?

A. Binding upon risks reported from the West Indies to Montreal, do you mean? We had no open contracts whatever of any kind or description covering to the British Provinces.

Q. How soon after your agents accepted the risk for you in Montreal did you get notice of its acceptance, that they had bound the defendants?

237 A. We got the original application with the probable amount of the shipment given—that is, of the sugar—on the receipt of the mail, and it was stamped here June 28th, 1882.

Q. That was how soon after your agents had accepted the risk at Montreal?

A. That was four days after the application was dated in Montreal, just about the time for the mail to arrive here.

Q. That is, by a tolerably prompt transmission of the mail here?

A. Yes, sir.

Q. State the dates of the other reinsurances.

A. July 28th, 1882, in the case of the China, Boylston, Ocean, New Orleans, and in fact all the rest except the Hibernia. The Hibernia was made on the 29th of June. As I said before, we got the particulars of the reinsurance which was effected on 28th of July. It is to be supposed that the reinsurance was placed with the Hibernia and with all the companies on the same day exactly.

See corrections March 11, '85.

Q. By the same party?

A. By the same party.

Q. Your agent in Montreal?

A. Our agent in Montreal.

238 Q. I now desire to call your attention to the barque "Adele," bound on a voyage, in the spring of 1883, from Java to Montreal, and beg you to state what insurance the defendants made upon that vessel and cargo, for whom it was made, the reinsurance made for the defendants, and by what companies it was made.

A. As far as these applications before me show on August 7th, 1883, $1,383 was insured on advances for the St. Lawrence Sugar-Refining Company. On May 7th, 1883, $47,392 was insured on Jaccatrass sugar for the same company. The original application covering the cargo of the barque "Adele" appears to have been en-

tered in the book in which such risks are entered January 26th, 1883, afterwards filled in by $17,392, $42,869, and $1,383, making in all $91,644.

Q. What reinsurances were made for the defendants?

A. There were fourteen different reinsurances, aggregating $81,500: Hibernia Insurance Company, $5,000, April 26th, 1883; China Insurance Co., $10,000; Boylston Insurance Co., $5,000; Washington Insurance Co., $5,000; Ocean Insurance Co., $5,000; Union Insurance Co., $3,000; Merchants' Insurance Co., $3,500; Hope Insurance Co., $2,500; Mec. & Traders' Ins. Co., 2,500; People's, $2,500; New
239 Orleans, $5,000; Southern, $2,500; Great Western, $10,000. The above are all dated April 26th, 1883. The Delaware Mutual, $20,000; dated May 5th, 1883.

Q. Where were those reinsurances effected and by whom, if you know—by your agent at Montreal or here?

A. My own idea is that they were all effected in Montreal, except that in the Delaware Mutual, which was placed at the home office, in Philadelphia.

Q. Do you mean that they were all effected by your Montreal agents, except the Delaware Mutual?

A. Yes, sir; exactly. I think the Delaware Mutual was placed by our home office here with the home office of the Delaware Mutual here. That amounted, as I have already said, to $20,000.

(See evidence, March 11, '85; cor.)

Q. I now direct your attention to the case of the steamship "Avlona," on a voyage, in the autumn of 1881, from Marseilles and other ports in the Mediterranean to Montreal. Be kind enough to give the insurance that the defendants made, and for whom, and state also the reinsurance, giving the amounts and dates and the names of the companies.

A. $2,220 on sundries for D. Masson & Co.; $1,010 for Tees, Costigan & Wilson; $1,800 for Copeland & McLaren. Those are dated 11th October, 1881. $1,611 for John Hope & Co.; dated October 15th, 1881. $300 for Robert Hampson; dated October
240 15th, 1881. $3,042 for Simpson, Stewart & Co.; dated October 25th, 1881. $1,788 for J. E. Mullen & Co.; dated 27th October, 1881. $853 for D. Masson & Co.; dated October 14th, 1881. $297 for John Hope & Co.; dated October 26th. $880 for John Hope & Co.; dated October 26th. $5,850 for Edward Adams & Co.; dated October 25th. $1,400 for Kinlock, Lindsay & Co.; dated October 25th. $1,426 for the same firm; dated October 25th. $829 for D. Masson & Co.; dated October 25th. $137 for the same firm; same date. $1,599 for the same firm; same date. $1,157 for the same firm; same date. $1,788 for the same firm; same date. $447 for the same firm; same date. $894 for the same firm; same date. $894 for the same firm; same date. $1,073 for the same firm; same date. $536 for the same firm; same date. $894 for the same firm; same date. $3,090 for the same firm; same date. $1,099 for the same firm; same date. $1,038 for J. A. Mathewson, October 14th. $1,061, October 17th, for the same person. $2,847, October

17th, for Kinlock & Lindsay & Co. $1,824 for Ross Hall & Co., October 17th. $1,158 for George Childs & Co., October 17th. $6,023, John Hope & Co., October 22nd. $1,737, George Childs & Co., October 22nd. $753, J. A. Mathewson, 24th October. $393, Tees, Costigan & Wilson, October 25th. $2,813, Kinlock, Lindsay & Co., 12th October. $1,415 for W. Donahue, October 18th. $523 for John Hope & Co.; dated October 31st. $6,538, John Hope & Co.; same date. $619, same date, same firm. $234, same date, same firm. $1,355, Vipond, MacBride & Co., October 31st. $1,375, Brown, Balfour & Co., 27th October. $1,194, same firm, same date. $982, W. Donahue, 31st October. $2,681, same firm, same date. $616, A. Savage & Son, November 16th. $532, J. A. Mathewson,
241 dated November 15th. $87, A. Harvey & Co.; dated November 10th. $3,226, Thomas Tiffen & Co., November 2nd. An open application of Alexander Harvey & Co.—dated October 12th, completed October 25th—for $5,362. That seems to be the entire line from various ports to the Mediterranean, and on various articles of merchandise.

(Answer in evidence, M'ch 11, '85.)

Q. What is the whole amount?

A. I will answer that question positively to-morrow, when I can have an opportunity to recapitulate. The total line is stated here to be $82,300.

Q. What reinsurances were made by the defendants?

A. Before answering that question I would like to explain that by reinsurance blotter is meant the book in which completed entries of reinsurance are made—in other words, the entry in the reinsurance blotter is no criterion as to the date a reinsurance was effected at any time whatever. When I give you dates entered in that blotter the reinsurance may have been placed six or seven months before the date at which it is entered in this book from which I am reading. These are simply the completions of the reinsurance when the amounts are known.

Q. They are your record of that?

A. Yes, sir.

Mr. SABOURIN:

Q. Then when you were asked to give the dates of reinsurance what did you mean to state?

A. I have always given them as reported in this book. The reinsurances in the last-named case are as follows: December 16th, 1881, there is an entry in the reinsurance blotter, Oct. 20th,
242 1881, China Insurance Company, $10,000; 27 Oct., '81, Salem Insurance Company, $5,000; 26 Oct., '81, Boylston Insurance Company, $5,000; Nov. 10, '81, Washington Fire & Marine Insurance Company, $10,000; 18 Oct., 1881, Royal Canadian Insurance Company, $5,000. Under date of December 21st, Hibernia Insurance Co., $5,000. That is all. They aggregate $40,000.

Adjourned to 10 a. m. Friday, March 6th, 1885.

243 *Testimony of Wm. A. Platt, Recalled, Offered by Complainants.*

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE CO. OF NORTH AMERICA. } No. 10647.

PHILADELPHIA, *March* 6, 1885—10 a. m.

Present: The master, Hon. A. G. Brice, and Messrs. Sansum and Sabourin, of counsel.

WILLIAM A. PLATT recalled:

The witness, referring to his statement as shown on page 7 of the deposition, states that he desires to explain as follows:

"I wish to correct that statement and to say that at that time we had an open contract with the Manufacturers' Insurance Company of Boston; and where I answer "No, sir; we had not" I should have said that we had a contract with the Manufacturers' at that time covering policies in excess of $50,000, as stated by me below. That was on the excess of $50,000—the same as all the other companies."

Mr. SANSUM:

Q. Referring to page 5 of your testimony of yesterday, I would like to know (for I fail to find it anywhere stated) how much the defendants did insure on the "Obi."

A. It was completed by particulars, dated October 18th and November 8th, 1881, for $43,596 and $1,403, respectively, amounting in all to $44,999.

244 Q. You say that the defendants had a contract with the Manufacturers' of Boston, reinsuring them on the excess of $50,000.

A. Yes, sir.

Q. Did you reinsure any part of that excess in this instance with the Manufacturers' of Boston?

A. No, sir. There was no excess of $50,000 to reinsure, as far as I have the papers before me.

Q. Then did you make a special application to the Manufacturers' of Boston, or how did they come to be your reinsurers?

A. There was a special application made.

NOTE.—The witness here desires complainants' counsel to inform him whether, in his question which appears on page 7 of the deposition, wherein he asks if the defendant had open contracts or binding contracts with the Manufacturers' Insurance Company of Boston and with the Northwestern National in June, when this risk was accepted from the East Indies, he, counsel for the complainants, means an open East India policy or an open reinsurance policy of any kind; to which Mr. Sansum replied that he means of any kind.

The WITNESS: I then desire to correct my answer and to say that

in June, 1881, the Northwestern National Insurance Company did reinsure, under open policy, the Insurance Company of North America, but that it is customary, in cases of risks which the Insurance Company of North America think to be good, to reinsure specially with those companies who hold their open policies, because they naturally favor them in giving them reinsurance.

245 Q. When was that special application made by you to the Manufacturers' in the case of the "Obi?"

A. On June 8th, 1881, I wrote to Forster & Scull: "Please reinsure our excess of $25,000 per ship 'Obi' from Philippines to Boston." In their letter of the same date they suggest that the lines by three vessels from the East Indies, among which is the "Obi," should be reduced by reinsurances. It is to be presumed that on the receipt of our letter they reinsured what was reported to us as placed by them.

Q. Is that all the knowledge or information which you have of a special application made to the Manufacturers' of Boston for reinsurance?

A. After we ask our agents to reinsure the matter is left entirely in their hands. They report what reinsurance is placed, which I can turn to at any time in our copy books.

Q. My question is this: That that is the sum and substance of the information that you have on the subject before you—you have no other?

A. I can follow it out until the particulars of the reinsurance was reported. If it was placed open or if was placed flat, I can turn to the report from our agents showing that it was so placed.

Q. Have you in your possession the policy of the Manufacturers' and of the Northwestern National?

A. I have them all; every open policy that we have.

Q. Please produce the same.

A. It will take some little time to have them looked up. I

246 will produce them hereafter.

Q. You are entirely satisfied that the reinsurance which was made on the ship "Obi" was made by your agents in Boston and not by yourselves here?

A. I could show it to you.

Q. But I say you are entirely satisfied on that score?

A. I cannot speak from memory about it. I can show to you immediately by the books whether it was placed here or whether it was all placed in Boston.

Q. Please do so.

A. Under date of June 16th, 1881, Messrs. Foster & Scull send us the customary memorandum of open reinsurances effected per ship "Freeman Clark," 10,000 on the excess of 40,000; ship "Hercules," 10,000 on the excess of 40,000, from Ilo Ilo to Boston; ship "Oakland," 10,000 on the excess of 40,000, from Ilo Ilo to Boston; barque "Janet Ferguson," 10,000 on the excess of 40,000, besides on the excess of 70,000 on the same vessel. We are in the habit of reinsuring sometimes in this way: For instance, we carry $10,000. We reinsure $40,000 on the excess of 10,000 to bring it up to 50,000. Then

we will be covered, under open reinsurance policies, on 20,000, say on the excess of 50,000, which will protect $70,000. Then we cover the excess of 70,000 up to $100,000, and frequently we then cover $50,000 on the excess of $100,000 to protect our line up to $150,000, especially with these big sugar-refining companies' policies. We constantly have reinsurances on different excesses under open policies. For instance, I can show you to-day, if you wish,
247 the Brazil policies, where the China Mutual Company covers us on the excess of $65,000 a certain amount and where some other company, say the Northwestern National, covers us 5,000 on the excess of 50,000, leaving a gap between $55,000 and $65,000.

Q. Leaving your line anyhow at $50,000?

A. No, sir; leaving us at $60.000, if it would amount to $70,000. Our lines vary in the different businesses according to our judgment of the risks. We have never had a given line stated yet what we would carry. This morning I have reduced several lines far below the line that might be considered our maximum line—that is to say, the line which we are permitted by our board of directors to carry as a maximum. In steamers we carry $75,000 sometimes, and then again we carry $10,000; but the China Mutual Company, under the Brazil policy, about which I was just speaking, have no idea that we are covered on the excess of $50,000 also. They cover us on the excess of $65,000, which we reduce our line under that policy down to $10,000, and we do not consider that the China Mutual has anything to do with it. Our neighbors next door, the Delaware Mutual, have opened reinsurance policies in the same way, protecting them on the excess of $30,000 up to $55,000. They frequently come to us and place $15,000 flat on a coastwise cotton vessel, which will reduce their line $15,000 below the sum named for their excess reinsurance. They frequently do that. Sometimes they come and reinsure the excess $5,000, and I myself have frequently reinsured the whole amount of the vessel. Yester-
248 day the British and Foreign Insurance Company of New York offered us a reinsurance which I happen to know from my own knowledge was the whole line that the British & Foreign Insurance Company would have on the vessel.

Q. Did you take it?

A. No, sir; because we would not take the river business; it was the Mississippi river business; but we are constantly reinsuring in such manner as I state. For instance, we reinsured some time ago a vessel with the Atlantic Mutual Insurance Company of New York which the Atlantic Mutual thought very well of, and we gave them our whole line, practically. If we are asked what line we carry we say, If the company who is asked to reinsure does not want it they have simply to say so. Our facilities for reinsuring are very, very great. At any moment we can place $200,000 on almost any class of business. We have had two lines this winter of over $250,000 on one vessel—cargoes—which we were obliged to take owing to the character of the business. If we had not taken it our customer would have said, "If you won't take the whole line we will take it somewhere else," and our policy would have been

cancelled. We are obliged to carry those very large lines—that is, to make ourselves primarily responsible to the assured for those very large lines in order to compete in these times for business. We cannot do anything else. We have done it at all times. I have seen reinsurance risks of $100,000, $200,000, $250,000, and $300,000 which have been given away by this company, and if we did not do it our business would fall to the ground. That was the very object of increasing the capital stock of this company
249 and making an addition to the surplus of this company, so that we could compete with the Atlantic Mutual and other companies. Our lines are very varied. They run all the way from $10,000 to $100,000. On some steamers, all through the year, the applications come in and I never even look at them; I simply let them go through. We had one vessel reported last winter $150,000. We carried it all; but the majority of that line was reported after the vessel arrived out. The business is so fixed that we cannot tell absolutely what line we have on the steamers—it is impossible for us to tell; so that, as I say, if a vessel comes in from the Philippine Islands we never carry over, when we can help it, though we have had a great many total losses not owing at all to the East India business or to the sugar business—a certain amount. A cotton vessel or a refined-petroleum vessel can go ashore, or an East India vessel can go ashore, and it has nothing whatever to do with the matter of the cargo. Since the disaster in the Sunda Straits and the great earthquake there we have been reducing the line on the East India vessels, sometimes down to $20,000 in the best ones. I do not know a vessel on our loss books that any insurance company of the United States would not accept a risk on. Two weeks ago we had the steamer "Benwell Tower," from Baltimore to Liverpool. We had a line reported of about $70,000. I once tried to reinsure the excess of $40,000. There was a little delay and the vessel sailed, met with an accident, and put back, and I could get no reinsurance
250 except $10,000. We lost the $63,000 net. On the steamer "Schiller," some years ago, we had $84,000 net loss. I have taken several risks this morning that have passed through my hands from the agencies, amounting to over $100,000.

Q. On any one vessel?

A. Yes, sir; each case on one vessel. I can turn to the book before me and show you hundreds of lines, I was going to say, in the West India business, the East India business, the cotton business, and different businesses that we have on our books to-day, all the lines on each vessel being over $100,000. I can show you a great many of those.

Q. And you have to take them in order to keep up your business?

A. We are obliged to take them to stay in the field. If we do not take those lines—that is to say, if we do not accept what our customers offer us—we cannot pretend to issue them policies.

Q. You cannot pretend to keep their business?

A. We cannot pretend to. They would go right away. They would go to some big foreign company.

Q. And so you protect yourselves by reinsurance?

A. Yes, sir; I have now under way arrangement of reinsurance which contemplates the reinsurance of $250,000 on our excess of $70,000, but we are not going to carry $70,000. I intend that we shall reduce those lines 20,000, 30,000, 40,000, 50,000—anything we choose to do. If those reinsuring companies wish to know that they can simply ask the question.

251 Recurring to your request for information about the ship "Obi," Philippine Islands to Boston, I find the following: Manufacturers' Insurance Company, 5,000, excess of 25,000; Northwestern National Insurance Company, 2,500, excess of 25,000; Hibernia Insurance Company, New Orleans, 10,000, excess of 25,000, placed by our agents in Boston. That is under date of June 16th, 1881.

Q. I have requested you to produce your contract with the Manufacturers'. Please do so.

Witness produces said contract, which reads: "Reinsuring the Insurance Company of North America on goods on board of any vessel or vessels *and* or conveyance at and from Bombay and ports east thereof to port or ports of destination in the United States direct or via port or ports, with liberty of transshipment, attaching to excess of $50,000 on all interests by said company on any one risk and *pro rata* with all other reinsurance on the same excess, attaching to risks reported on and after this date, but not to exceed $10,000 by any one vessel, including war risk, when covered by the Insurance Company of North America, and lighterage; subject to same risks, valuations, and conditions as are taken by the assured and loss, if any, payable at the same time. Either party is at liberty to cancel this policy at ten days' written notice, but not to prejudice any risk then pending. Dated 19th December, 1879."

Q. I understand you to say that the risk which you had on the "Obi," that policy of the Manufacturers' did not attach to it because you have no excess of $50,000 and it was necessary for

252 you to make a special reinsurance to them.

A. Yes, sir; you will understand what I mean by a special reinsurance.

Q. You can explain it if you think I do not.

A. I simply mean that the company is asked whether they will take a line—for instance, on the ship "Obi." They say, "We cover you under open policies from the East Indies to the excess of $50,000." "All right," we say, "provided there is any line in the excess of $50,000. If you will take this line, of course we will except you from the open policies, provided the two together would not make more than your full line."

Q. What you mean by that, if I understand you correctly, is this—you apply to them specially because you know that this contract does not attach to that risk?

A. Exactly; yes, sir.

Q. And when you go to them and make the application it is understood by them that this policy does not attach because you have not an excess of $50,000 without any explanation?

A. But we might have at any time an excess of $50,000. If we did we would fill their line in to the extent of the limit in their open policy. We would except them from the open policy by as much as was given to them under the special policy if they so requested.

Q. But if you had had an excess of $50,000 on the "Obi" there would have been no necessity for you to make a special application to them at all in this case?

253 A. Oh, yes; there would.

Q. Why?

A. When the line is under 50,000 we frequently reinsure specially, as I stated a little while ago, with companies who reinsure us under open policies.

Q. I speak of this particular instance. You made a special application to the Manufacturers' in this particular instance for the "Obi" because this contract did not apply?

A. Exactly.

Q. And it did not apply because you had not insured over $50,000?

A. But we did not know but what we might be called upon at any time to insure more than $50,000.

Q. I understand all that. I am not talking about what you might be called upon to do, but the reason why you made the special application was that you could not rely upon this policy?

A. Yes, sir; exactly. Because that policy covered on the excess of the $50,000 and we did not want to carry $50,000. That is it exactly.

Q. Then we do not understand each other. In order that I may be very clear about it, I will ask you this question: Inasmuch as you had not insured $50,000 and had not that at risk, it became necessary for you to make a special application to this company?

A. Not exactly. That is not it.

Q. This policy did not cover you unless you had $50,000?

A. Exactly.

Q. That is clear?

A. Yes; that is perfectly clear.

254 Q. Now, in order to have the Manufacturers' reinsure you at all you had to make a special application. Isn't that so?

A. That is so; yes, sir.

Q. The next inquiry that I wish to make about the ship "Obi" is, when and where was she lost, if you remember?

A. She was not lost. There was a partial loss on the sugar and a general average incurred by the vessel putting into Bermuda.

Q. When did she put in there?

A. I will state hereafter from the books.

Q. I now wish to call your attention to the case of the "Budstikken." You said yesterday that there was only $5,000 reinsurance made for the defendants on that vessel. I wish you to refresh your memory on that subject and state particularly, because the answer which you filed in the case shows that you reinsured the whole risk.

A. I referred only to the reinsurance in the Hibernia Insurance Company.

Q. But my question was this—and I read it now for you: "What reinsurance was made for the defendants on that vessel for that voyage?" Your answer was: "When the open application reading 'about $35,000' came in from Montreal it was thought prudent to reduce the line to $30,000. Therefore $5,000 reinsurance was placed in the Hibernia."

A. That should be corrected. In addition to that there was $5,000 in the American Insurance Company under date November 20th, 1882; $1,750 in the Hope Insurance Company (of New
255 Orleans, I suppose), same date; $3,750 in the New Orleans Insurance Company, same date; $2,000 in the Teutonia Insurance Company, same date; $2,500 in the People's Insurance Company, same date; making a total of $20,000 reinsured.

Q. Therefore such reinsurance exceeded the amount of your risk over a thousand dollars, or somewhere about that?

A. Somewhere in that neighborhood; yes, sir.

Q. Then you kept no risk at all on that vessel?

A. We could not. We wanted to, but could not.

Q. I do not understand why you could not keep a part of that risk, when you say that you obtained the particulars of the whole risk on the 24th of October, 1882, and nearly a month after you made these other reinsurances. Why did you make the reinsurances on the 20th of November, '82, to an amount of $20,000, when you had less than about $19,000 on the vessel?

A. I have not said at any time that those reinsurances were made on that date. I simply said dated November 20th. The reinsurances were made long before that time.

Q. What do you mean by dated?

A. They are simply entered in our reinsurance blotter at that time. I have just sent upstairs for the letters in the case.

Q. Have you the means of knowing when these reinsurances were made in fact?

A. I have just sent up for that information. Probably they were made when the open application was received, "about
256 $35,000," because, of course, this company would have no idea of carrying $35,000 on any risk to Montreal. The dates that I read off in this book simply mean the dates that the reinsurance is reported to us by our agents. Mr. Hampson would write to New Orleans for this reinsurance at once. The New Orleans companies would take the reinsurance and would notify him, all of which would consume, say, ten days. Then he would report to us that he had reinsured, open or flat, as the case might be, in different cases, such and such risks. Then, when the rate was filled in, it is customary on the Montreal business to leave the rate open for a long while, because the months vary so in danger in the Montreal business that there is no fifteen days alike except in midsummer. Just at the time that this risk was reported, just at the time it was filled up, the rates varied every ten or fifteen days, so that Mr. Hampson could place the reinsurance flat, but yet would have to

wait to pay the reinsurance premiums until he could know what rate to charge.

Q. Then the rates would vary as to the dates of the vessel's sailing?

A. As to the probable date of arrival. It was always left until the arrival of the vessel in Montreal. That is the custom.

Q. But your rate would be governed not by the date that the vessel arrives but by the date she sails from her port of departure?

A. No, sir; not at all. It would be governed by the date that the vessel arrived. If she arrived in November, when the season of navigation was closed, we would make a higher rate. That you will see from the fact that we reported an additional pre-
257 mium to the Hibernia Insurance Company for their risk five days after we took it of a half per cent.

Q. What date did you report that?

A. September 28th. That was on the same cargo. When the open application was received there is no rate mentioned for the risk.

Q. What is the date of the open application?

A. September 20th. Under date of September 21st, 1882, Mr. Robert Hampson, in a letter to the company, writes as follows: "Please reinsure $5,000 on sugar and on other cargo by the Norwegian barkentine 'Budstikken,' 203 tons, Jamaica ports to Montreal, expected to sail this month, and kindly say what rates should be had by her, the cargo being reported under Messrs. Gillespie, Moffatt & Co.'s policy." On the 26th of September Mr. Hampson writes that as the season is late kindly alter the rate which we have been good enough to enter two per cent., which was immediately notified to the Hibernia Insurance Company, as they were entitled to receive it under our opinion. I cannot put my hand on that letter saying, if he did say, when he reinsured the rest. It was reinsured by Mr. Hampson in Montreal, as is shown by our reinsurance blotter.

Q. I understand you to say that it was reinsured by your Montreal agent, because your blotter so states. Is that it?

A. The blotter is absolutely correct; yes, sir.

Q. I do not ask you whether the blotter is correct or not. My question is whether you found your statement upon that blotter?

258 A. Yes, sir; I found that statement on it, and in the absence of the absolute proof, which I can produce in a little time, I should say that it was correct.

Q. What other proof do you think you could produce?

A. I can produce, probably, Mr. Hampson's notice to us that he effected the reinsurance, or if it was not effected by him the notice from us to him that we effected it.

Q. Then I will pass to another subject, requesting you to furnish that information hereafter. Had you any other contracts outstanding at that time similar to that of the Manufacturers' covering the excess of $50,000 from ports in the East Indies to the United States?

A. You are now referring to what time?

Q. I refer to the time of the Manufacturers' and about that date, June, 1881.

A. We had policies from the New York Mutual and the Insurance Company of the State of Pennsylvania covering from the East Indies.

Q. Covering the excess of $50,000?

A. I think so; yes, sir. I can tell you that absolutely, as I have the policies themselves.

Q. Please state what the fact is.

A. (Examining same:) The Insurance Company of the State of Pennsylvania covers the excess of $50,000. The New York Mutual also covers the excess of $50,000.

Q. Were those all of the policies that the defendants had covering from ports in the East Indies the excess of $50,000?

259 A. No, sir; we had the policy in the National Lloyds which covered on the same excess, but which excepted any reinsurance on shipments of sugar.

Q. Anything else?

A. No, sir; no other contract from the East Indies under open policy—that is, in June, 1881.

Q. Did the defendants make any other contracts subsequently to that date covering the excess of $50,000 from ports in the East Indies to the United States? If so, please so state, giving the names of the companies.

A. One was added, I find, in November, 1881, in the Hibernia Insurance Company. Since that time others have been added.

Q. Referring again to the Budstikken, your reinsurance amounted, you say, to $20,000.

A. I think that is the figure I said; yes, sir.

Q. Are you able to state how much reinsurance you collected from each one of the companies?

A. (Referring to policies:) I can now give you the information which you requested about the reinsurance on the Budstikken, which I said I would look up. Our agent in Montreal wrote to us as follows:

"Regarding the reinsurance by the Budstikken, I herewith enclose copies of correspondence with Messrs. Scull and Bradley. The estimate of the line expected by this vessel is noted in the reinsurance book in the handwriting of Mr. Porteus" (whom, I would say, was at that time Mr. Hampson's clerk, who died in May, 1883,

260 I think) "as $30,000 to $35,000. Believing this to be about the amount to be insured, I asked you to reinsure five thousand flat and I also wrote to Messrs. Scull and Bradley to place $15,000 on the excess of $20,000, which would have left you $15,000" (which, I would say, is about the line we would carry on about such a vessel at that season of the year from Jamaica to Montreal)," but as they could only get $5,000, which they took the liberty of placing flat, I had to look elsewhere, and placed, on the 26th of September, 1882, $10,000 flat, which I then supposed left you from $10,000 to $15,000. The vessel was a good one. Her cargo has been sold for within $100 or so of the amount insured, and I was told, no doubt

correctly, after the loss occurred that the hull was not insured. The loss is as straight a one as could be made."

Q. My inquiry is with respect to who procured it.

A. Mr. Hampson says that he did. So he did. I was just going to say, under date 22 September, 1882, Robert Hampson, our agent, wrote to Scull & Bradley, who were our agents in Boston—our Montreal agents wrote to our Boston agents:

"Will you kindly reinsure $15,000 on the excess of $20,000 on cargo per Norwegian brig Budstikken, 203 tons, Hansen master, built in 1881, from Jamaica ports to Montreal, vessel expected to sail this month, at no less than two and a half per cent. less twenty, and $5,000 on the cargo of steamer 'Mississippi,'" etc., etc.

Under date September 23rd, 1882, Scull and Bradley, our agents in Boston, write to Mr. Hampson:

261 "Your favor of the 22nd inst. received. We have placed $5,000 per steamer 'Mississippi,' Montreal to Liverpool, in the China Mutual, etc., and have only succeeded in reinsuring $5,000 per Budstikken, Jamaica to Montreal, in the American Insurance Company at two and a half per cent. less twenty, all other companies declining risks hereafter from the West Indies."

Mr. Hampson, under date of October 24th, writes to Scull and Bradley:

"In my letter of the 22nd ultimo I asked for reinsurance per Budstikken on the excess of $20,000, but having since then received the policy of the American Insurance Company for $5,000 flat I suppose it would not do to ask them to cancel it, as I would like to do. The full line by the vessel reported to-day is $20,000, while the estimate given was $30,000."

Under date of October 25th Scull and Bradley write to Robert Hampson:

"The American Insurance Company would not feel like cancelling the risk per Budstikken now, as in case of loss previous to this they would have been called upon for the amount." In other words, our agent in Montreal tried his best to keep our line.

Q. Do I understand you to say that your agents in Montreal or your agents in Boston procured the Hope and the New Orleans companies to take the risks on the Budstikken?

A. Our agent in Montreal procured the reinsurance in the New Orleans companies and our agents in Boston procured the reinsurance in the American Company of Boston.

262 Q. My question was for you to state how much money was collected by the Insurance Company of North America.

A. (Referring to memorandum:) $5,000, less a half per cent. for interest for the American Company, making net $4,975; $3,750, less a half per cent. interest, making net $3,137.25 from the New Orleans; $1,750, less a half per cent., making net $1,741.25 from the Hope Insurance Company, New Orleans; $2,500, less a half per cent., making $2,487.50 net from the People's Insurance Company; $2,000, less a half per cent., making $1,990 net from the Teutonian Insurance Company; $5,000, less a half per cent. and the whole short interest under $20,000 from the Hibernia Insurance Company,

making net $4,288.45. All those bills against the reinsured companies are dated December 30th, 1882, and I presume that they are all paid on the basis of the figures in those bills, but that I can show by our ledger down-stairs in the account of the reinsurance claims.

Q. You say the Hibernia paid $4,288.45. Why didn't they pay as much as the American Insurance Company?

A. Because it was thought proper. We had the option of dividing up the short interest between any companies we chose, so we deducted it from the Hibernia, as our relations with them has always been most friendly.

Q. The short interest you mean is the difference between the sum at rest and the sum reinsured?

A. Precisely; yes, sir.

Q. With respect to the contribution in the case of the bark "Adele," do you say that there were $47,392?

263 A. Yes, sir.

Q. I think the loss is stated in your answer as $20,819.80?

A. Yes, sir.

Q. And the whole amount of reinsurance is $61,500?

A. Yes, sir.

Q. How do you make out the proper proportion of contribution? Will you be kind enough to state that?

A. The "Adele," as far as my memory serves me, sailed from Batavia, in the Island of Java, in the sugar business. They are accustomed to use several ports. She took on the first amount of her cargo, which was insured under our policies, at Batavia. We effected reinsurance at that time when the open application was handed in to us. By "open application" I mean the probable amount which would represent the shipment insured under our open policy. The bark "Adele," if I remember correctly, sailed from Batavia, and a casuality of some kind happened to her between Batavia and some other port in the Island of Java. She had on board at that time, of course, only what cargo—that is, as far as we know, there may have been more, but as far as we had to do with her she had on board the cargo only which she took on at Batavia. The reinsurance I could tell in a very few minutes when it was placed and whether it was placed flat or on excess, but I think it was placed —, covered from the Phillippine Islands or the Island of Java, I forget which, one of the two, to the port of destination. Being placed flat and the bark not yet having arrived at a port where she was to take on more cargo, which would tend to complete the application which was placed with us under open

264 policy, had only whatever was stated under our application on board at the time of the casualty, which was $47,392. If the reinsurance was placed flat and if there was no other amount on board of the vessel to be insured at the time of the disaster, the companies reinsuring, if they more than covered or covered to the extent of the cargo taken on board at Batavia, took the whole interest and would have to pay for that whole interest.

Q. Then your answer, if I understand you correctly, means this:

That under the circumstances which you state the Insurance Company of North America, under the several contracts of reinsurance which they effected upon the "Adele," could and did collect the whole amount of the loss, whatever that was?

A. Certainly; yes, sir.

Q. And that they would pay no part of it themselves?

A. Not any part of it themselves; no, sir. That is the custom of marine insurance. We have a case on hand now where a company has to pay us in exactly the same way.

Q. I am not asking you about any custom. Can you tell me just what it was in this particular instance?

A. Yes, sir; that was it.

Q. I am asked to put the question to you in this way: If there was only $47,392 on the vessel at the time that the disaster took place why did you calculate the contributions upon $61,500, which was not, in fact, at risk?

A. $61,500 had nothing to do with the line; that was the amount of the reinsurance.

Q. You made reinsurance $61,500?

265 A. Yes, sir; as far as my memory serves me.

Q. There was a loss of $21,819.90?

A. Yes, sir; but the loss $20,819.80.

Q. And there was only $47,392?

A. Exactly.

Q. At risk?

A. If those are the correct figures; yes, sir.

Q. Then you predicated the ratio upon $61,500?

A. Yes, sir; the proportion would have been, if $61,500 pays the whole loss what will each reinsurer pay?

Q. Leaving the Insurance Company of North America nothing to pay?

A. Of course; yes, sir.

Q. How much of the whole risk taken by the defendants on the bark "Adele" did the defendants retain or carry without reinsuring it?

A. I will have to refer to the books. By the figures which you have given me as the reinsurance, which I suppose I stated yesterday, $61,500.

Q. That is a mistake. It was $81,500, because you added $20,000 in the Delaware yesterday.

A. Before saying our net line I would like very much to confirm the reinsurance (referring to papers). At the time of the disaster there was $61,500 reinsurance, afterwards increased to $81,500, the company who reinsured the $20,000 being excepted from any claims made for the loss which had happened, of course, prior to the date of that policy. In other words, the Insurance Company of

266 North America at the time of the loss carried something like $30,144. After the vessel had been put in perfectly good condition to proceed to destination they reduced their line.

Q. After the disaster had happened you made the $20,000 additional reinsurance?

A. Yes, sir, and warranted the reinsurance should be free from claim.

Q. Warranted the Delaware Mutual free from claim for anything that occurred prior to that date?

A. Yes, sir; by that accident.

Q. Of course you were bound to disclose to them—you did disclose it to them?

A. It would not have been quite proper for us to have got that reinsurance if we had not, nor would we have done so.

Q. Why did you not add the $31,000 that you carried before the loss to the $61,000 of reinsurance and draw the proportion in that way upon $92,000?

A. Because there was no amount of risk under our policy at that time; the reinsurance having been placed flat, as I have before stated, took the whole amount on board. If there had been $61,500 on board the reinsuring companies would have paid it. If the loss had amounted to $61,500 the reinsuring companies would have paid it. If the loss had amounted to any more than $61,500 and there had been more on board, the Insurance Company of North America would have prorated the loss on the excess of $61,500 up to its line on board. When I say $30,144, that would be deducting the whole amount of reinsurance from the whole amount of line,

but there was no line amounting to that much on board at
267 the time of the accident. You asked me what our net line was. I say that our net line was—and by "net line" I suppose you mean the net line to us after the vessel had left Java and was on her way to the United States, don't you?

Q. No. I mean, at the time that the disaster happened how much risk did the defendants retain? I understand you now to say that they retained $31,000?

A. No, sir; that is a misunderstanding. They retained nothing whatever.

Q. And, therefore, you say that they were not bound to contribute for any part of the loss?

A. Therefore they were not bound to contribute for any part of the loss. Will you allow me to say one thing? A little while since, when I spoke about $30,100 as the line retained by the Insurance Company of North America—you must remember that the open application for insurance that we had read, if I remember rightly, about $114,000. At the time that open insurance was given to this company through our Montreal agency we could not tell; we had no means whatever of knowing how much of that $114,000 would come from Batavia; how much would come from other ports we had no means whatever of knowing, and consequently I simply wish to show you that our idea was when we got the reinsurance—that, the line being about $114,000, our idea was to cover by reinsurance a certain amount which would have left our line as the line was afterwards completed by the assured, which would have left it

all the $91,000 *been* aboard, $31,000 which we would have
268 had at the time she left Batavia.

Q. I understand you mean to say that the reinsurance

which the defendants procured was procured upon the expectation that you would have $114,000 for the voyage?

A. On the absolute uncertainty of what would be on the vessel.

Q. You predicated it upon that?

A. Yes, sir.

Q. You said "Here is an open application; it says about $114,000, and therefore we will procure reinsurance to such extent?"

A. Yes, sir; certainly.

Q. That is your idea of it?

A. Exactly. That is the way in which we insure.

Q. And you did not know and you have no means of knowing that she was going to take part of the cargo from Batavia and part from somewhere else?

A. We might have known that, but we had no means of knowing what proportions.

Q. She might have taken the whole of it at Batavia?

A. Exactly, or she might have taken the whole of it at the last place.

Q. And your contention in answering these questions upon this subject is that, inasmuch as you procured reinsurance exceeding the sum that you had at risk, you had the right to collect of your reinsurers the whole amount of loss?

A. If the reinsurance was placed flat we certainly had.

269 Q. Do you recollect at any time when the complainants here applied to the defendants for information respecting what amount of the risk in question had been retained by the defendants information was given to the complainants that the defendants retained $28,000?

A. I have before me a copy of a paper which was sent to the complainants stating that the line on the bark "Adele" was $91,644; that there was $81,500 reinsured, leaving a net line to the Insurance Company of North America after the vessel left Java of $10,144. I would like to state another thing, and that is that at the time the additional reinsurance of $20,000 was placed with the Delaware Mutual Insurance Company the supposition was still that we would have $114,000—in other words, that we would have the difference between $81,500 and $114,000 as our line, or more than $114,000, because there is a risk of $1,383 on advances, so that our line that we meant to carry on the bark "Adele" instead of being $10,000 was $30,000. The reinsurance with the Delaware Mutual was entered in our book and placed on the 5th of May; the particulars of the cargo were under date of May 7th and August 7th, respectively, at which time, of course, we presumed that we would have the difference. Even then we had no knowledge, the invoices had not come, and we supposed our net line would be the difference between $81,500 and $114,000.

Q. Can you put your hand now conveniently upon a letter that was addressed by the defendants to Marshall J. Smith & Co.?

A. No, sir; that would not be in our possession, any letter

270 addressed to Marshall J. Smith.

Q. But can you put your hand upon that letter-press copy and find out what you did say on the subject?

A. (Referring to letter-press book:) I have a letter-press copy before me of the letter referred to, dated November 23rd, 1883.

Q. Do you find in that letter upon reading it any statement made by the defendants the respecting amount that the defendants reserved or retained of the risk about which we have been speaking? If yea, please state what it is.

A. Yes, sir (reading from letter). "We then endeavored to obtain further reinsurance and finally succeeded in leaving our net line $28,000, which we carried to Montreal."

Q. Who is that letter signed by?

A. Signed by William A. Platt, second vice-president.

Q. Yourself?

A. Yes, sir.

Q. What explanation have you to offer respecting the conflicting statements that appear upon that subject?

A. I would simply say that the Delaware's reinsurance was overlooked when I wrote that letter, and that also an amount of insurance of $1,383 on advances was overlooked also.

Q. Referring to the answer which was put in by the defendants to the plaintiffs' bill, it is therein stated that the defendants retained $30,144.

A. That would have been just right if the difference was taken between $61,500, reinsured, that was subject to the disaster, and a line of $91,500, which, I think, was the total of the line reported.

271 Q. $61,000 from $91,000 would have left $30,000, but the fact is, according to your present statements, that you did not carry $30,000?

A. The line of $30,000 mentioned was predicated on the whole amount of the insurance being reported. The deduction of $61,000 from $91,644, which was the whole line, would leave exactly the line stated in our answer.

Q. You carried only $10,144?

A. After the vessel left Java; yes, sir.

Q. That is all you did carry?

A. Yes, sir.

Q. Then, in making the statement in your answer you must have disregarded or overlooked the $20,000 reinsurance in the Delaware Mutual in the same way?

A. I would say in reply to that that I was not here when the answer was being prepared. I was away from the office. If I had been the amount would correspond exactly with what I have stated as the line. The details of the marine business have not been as familiar to others as they have been to me for the past four years. I could have easily figured it up.

Q. Who procured all the reinsurance that was made for the defendants on the bark "Adele?"

A. I would have to refer to all the correspondence to tell you that accurately, although I think I have answered the same question before.

placed by Mr. Hampson himself under general instructions. Those general instructions I cannot put my hand upon.

Q. Do you think you can find them at all?

A. Yes, sir.

Q. You mean you cannot find them now?

A. No, I cannot; I have so many books of one kind or another I will have to make a thorough search. However, I know the dates of some of the reinsurance policies—some of them, anyway.

276 Q. Were they to cover the "Avlona" specially, or to cover other vessels, including the "Avlona?"

A. No; these reinsurances, these are to cover the steamer "Avlona."

Q. You have some of those?

A. Yes, sir.

Q. Are they all of one date?

A. No, sir; they seem to be of different dates.

Q. Will you be kind enough to name them in their order of dates and their different amounts?

A. (Referring to paper:) October 18th, 1881, Royal Canadian Insurance Company, $5,000; October 20th, 1881, China Mutual Insurance Company, $10,000; October 26th, 1881, Boyleston Mutual Insurance Company, $5,000; October 27th, 1881, Salem Marine Insurance Company, $5,000; November 10, 1881, Washington Fire and Marine Ins. Co., $10,000. Those are all that I have here.

Q. Have you anything to show when the Hibernia's was made?

A. Yes, sir; I think so, if it was placed here. The Hibernia's insurance was placed Oct. 18th, 1881, and reported Dec. 21st, '81. I have now found the advice of the amount of risk on the "Avlona" from Mr. Hampson. It is dated October 31st, 1881.

Q. You say you have the advices from your Montreal agent?

A. I have a telegram addressed to me from our Montreal agent. It is as follows: "Steamer 'Avlona,' Cadiz, 10th, via Halifax, Montreal."

Q. Does he mean by that she is there?

277 A. No, sir; he means, probably, that she sailed from Cadiz on the 10th. The date of the dispatch is October 30th, 1881.

Q. "Steamer 'Avlona,' Cadiz, 10th, via Halifax, Montreal, reported seventy-seven." What does that mean?

A. Seventy-seven thousand, I should imagine it meant. It says: "Reported, seventy-seven; reinsured, forty; seeking ten more in Boston. Please try for five." Then, under date of November 4th, I have a telegram, the purport of which is that the "Avlona" is expected to sail to-morrow from St. Johns for Montreal direct, and that if we think a further reinsurance of the forty thousand not reinsured desirable to please wire to Marshall Smith. "I wired him last Monday, on receipt of your telegram, but too late."

Q. He means by that Marshall Smith, at New Orleans?

A. Yes, sir.

Q. In the defendants' answer filed in this cause you say that you carried $42,319 of that risk, and that you reinsured five thousand

dollars on it with the complainants. I wish you to state whether that is a correct statement of the fact.

A. If you will give me a moment to have those applications added up down-stairs. I didn't add up all those. There are fifty-seven applications covering that one vessel, consequently I cannot make a proper answer.

Q. Did you wire Marshall J. Smith, in New Orleans, for other insurance?

A. I cannot speak for a certainty unless I look at the book. I do not believe we did.

278 Q. I want to know whether you ever made any reinsurance on the "Avlona," through Marshall J. Smith, at New Orleans. Please get the total amount of reinsurance on her and the total amount of insurance made by defendants.

A. The Hibernia Insurance Company placed open on October 18th, 1881.

Q. All the reinsurance?

A. The Hibernia Insurance Company, and it was placed by the home office in Philadelphia; also I gave you the dates of the policies received from Mr. Hampson. The dates of placing that reinsurance could not be found unless you wait until Mr. Hampson will send us down copies of all his correspondence on that subject.

The WITNESS: I should judge from that telegram that Mr. Hampson had taken care of that line without any consultation as to this special risk. The figures of the "Avlona" line, $82,300, are correct.

Q. Then the footings of these several risks on the "Avlona" do not agree with Mr. Hampson's telegram? He says $77,000.

A. But, as I have just explained to you, steamers from the Mediterranean ports use eight—ten to twelve ports sometimes. We cannot tell what we might have from other ports after she left Cadiz. In fact, she might probably stop at Marseilles or some other ports there, and we might have any further amounts after she left.

Q. Is there any means of ascertaining whether you did or not telegraph or write to Marshall J. Smith & Co. about procur-

279 ing reinsurance?

A. I will put that under way of examination.

Q. You say that the home office here placed the "Avlona" with the Hibernia?

A. Yes, sir.

Q. How did you do that?

A. Simply by asking the Hibernia Insurance Company whether they would accept a risk.

Q. How was that sent to them?

A. The application was made out and was sent up to the office of Charles Platt, Jr.

Q. Who made the application?

A. It was made out in this office, as always. Charles Platt, Jr., would then, I suppose, do as any agent would.

Q. You made a written application to him?

A. On our regular form; yes, sir.

Q. And sent it to him?

A. Yes, sir.

Q. What did he give you in return for it?

A. He showed us that it was entered in his book.

Q. He never gave you any writing?

A. We always waived the issue of a reinsurance certificate on policy which that application was made to represent from the Hibernia because we gave him a great deal of business for that company, and the arrangement was such that to have called for a policy or certificate every time a risk was given—that is, risks ac-
280 cepted by them—would have entailed a great deal of trouble to the Hibernia Insurance Company.

Q. You mean to say that you sent in your application to Mr. Charles Platt, Jr., here in Philadelphia?

A. Yes, sir.

Q. You left it with him and he gave you assurance either, by showing you that he had put it down in the books or otherwise, that the risk was accepted?

A. His assurance that the risk was covered was considered sufficient.

Q. Do you know whether it was his habit to retain your application or to send it forward to the company?

A. I don't know. In saying I don't know I would add that I should think that he would do just as any other agent would do. It is not the habit of our agents or any other agents in the insurance business, so far as I know, to send the original to the home office.

Q. The habit, then, is to keep that and send other advices and another paper?

A. Yes, sir; copies. The date of that application was October 18th, 1881, to the Hibernia Insurance Company.

Q. How were these reinsurances procured for the defendants on the "Yorkshire" from Barbadoes?

A. They were procured in one of several manners. I can refer to our books and tell you if you desire it.

Q. As to the barque "Skerryvore," from Havana to Boston, in the month of January, 1883, will you be kind enough to state the whole amount of the risk that the defendants had on that voyage,
281 and also the reinsurances?

A. The whole amount of the risk was 58,569 for the Standard Sugar-Refining Company of Boston, under an application dated January 2nd, 1883. That was the particulars, as I have before explained, of an application, December 16th, 1882, of about $40,000. The reinsurance made on that vessel was a special reinsurance of $15,000 in the China & Mutual Insurance Company—the 15,000 on the excess of $30,000 which was afterwards completed for the same amount. The reinsurance with the China Company was entered in the book December 21st, 1882. I can give you the date at which we wrote Scull & Bradley to make that reinsurance by referring to a letter.

Q. How much other reinsurance besides the China did you make, according to your books?

A. $714 in the Northwestern National Insurance Company; the Hibernia Insurance Company, $1,428; the China Mutual Insurance Company, $2,857; the Delaware Mutual Insurance Company, $3,570. The date of our letter to Scull & Bradley was December 20th, 1882. In that we said, "We will thank you to reinsure the excess of $30,000 per barque 'Skerryvore,' from Havana to Boston." On the 21st of December Messrs. Scull & Bradly wrote, "We have reinsured 'Skerryvore,' China, $15,000, excess $30,000." The probable amount of the risk being 40,000 governed them in placing 15,000 only at that time.

Q. In the statement that you sent the complainants in response to their inquiries as to this risk it appears that you reinsured $28,569?

A. That is right; I have just stated that.

282 Q. Your account now is only as to $23,000?

A. No, sir; I have just stated that we reinsured 15,000 in the China and 5,000 in the Boylston. That was dated January 13th in our reinsurance blotter.

Q. Did your Boston agents procure that reinsurance for you?

A. Yes, sir; under the general instructions given by us to reinsure the excess of $30,000, they knowing that we were protected by open policies on the excess of $50,000.

Q. I now refer to the case of the barque "Ocean," from Trieste to New York, in the month of January, 1883. How much insurance did you make for your dealers on that barque?

A. $24,307.

Q. How much reinsurance did the defendants make on that risk?

A. December 27th, 1882, the entry in the reinsurance blotter is $3,000, New York Mutual Insurance Company, placed by our New York agents; Hibernia Insurance Company, January 6th, 1883, $5,000, placed through Charles Platt, Jr.

Q. What do you say is the date of the original application?

A. The original application contained the amount filled in, $24,307 and is dated December 22nd, '82. The particulars, dated December 30th, 1882, contained the same amount, but with the rate filled in.

Q. I now call your attention to the barque 'Impi,' in the month of August, 1882, from Philadelphia to a port in Europe. State, if you please, how much insurance the defendants made for their dealers on that vessel on that voyage—how much reinsurance the defendants procured on the same vessel and the voyage?

283 A. On the 28th of August, 1882, the entries made in the open reinsurance book of 5,000 on the excess of 30,000 in the Hibernia Insurance Company; same date, 10,000 on the excess of 30,000 in the Orient Insurance Company of New York. That is all the reinsurance. We made insurance for $10,690. The reinsurance was afterwards closed for $3,563 in the Hibernia Insurance Company and $7,127 in the Orient Insurance Company.

Q. That made how much reinsurance altogether?

A. $10,690.

Q. How much of the risk did the defendants carry?

A. $30,000.

Q. Then the whole amount of risk the defendants accepted on that vessel on that voyage was $40,690?

A. Yes, sir; that was not, however, all on the cargo. $39,690 was on the cargo and $1,000 on the advances.

Q. I now direct your attention to the steamship "Peruvian," bound from Montreal to Liverpool in November, 1882, and beg you to state what was the amount of the insurance that the defendants made on that vessel on that voyage.

A. $27,120 from Montreal and $6,500 from our Chicago agency.

Q. What reinsurance did they procure on the same?

A. $5,000 in the Hibernia Insurance Company under date of November 29th, 1882, placed with the rate open Nov. 20th, 1882, according to the reinsurance books. That was also the date of the reinsurance. That is the date it was made.

Q. I now beg your attention to the case of the ship "Matchless," on a voyage from the East Indies in June, 1883, and ask you
284 to state the amount of insurances that the defendants made for their customers on that vessel on that voyage.

A. $123,488.

Q. State the amount of reinsurances that were made.

A. $73.488. Open reinsurances were effected under date March 20th—that is, it is so entered in the open reinsurance book as follows: Orient Insurance Company, 10,000 on the excess of 70,000; Ocean Insurance Company, 5,000 on the same excess; Salem Company, 5,000 on the same excess; China, 15,000 on the same excess; Boylston, 7,500 on the same excess; Boston Marine, 15,000 on the same excess; Shoe and Leather, 7,500 on same excess. The remainder of the reinsurance was under open policy, 20,000 on the excess of 50,000, in the following companies: Hibernia, 10,000; New York Mutual, 5,000; Insurance Company of the State of Pennsylvania, 5,000. The date I can obtain in a moment if you wish it.

Those open special reinsurances were closed June 25th, 1883, for amounts, respectively, as follows: $8,228, $4,115, $4,115, $12,343, $6,172, $12,343, $6,172.

The open policies were closed June 26th, the day after the others for, respectively, Hibernia Insurance Company, $10,000; New York Mutual, $5,000; State of Pennsylvania, 5,000.

This reinsurance am't requested by the defendants March 18th, 1883; the probable line under the open policies was notified to the companies reinsuring under open policies March 19th, 1883, and the particulars of the open policies reinsurances given June 26th, 1883.

Adjourned to 10 a. m., Saturday, March 7th, 1885.

285 *Testimony of Wm. H. Platt, Recalled, Offered by Complainants.*

THE HIBERNIA INS. CO.
*vs.*
THE INS. CO. OF NORTH AMERICA. } No. 10647.

SATURDAY, *March 7th*, 1885—10 o'clock a. m.

Present: The master (Hon. A. G. Brice); Messrs. Sansum and Sabourin, counsel.

WILLIAM A. PLATT recalled:

The WITNESS: I was asked for the disaster book containing the entry of the "Obi." I have it here before me. The loss was entered in the disaster book February 20th, 1882, on page 42 of the book.

Mr. SANSUM:

Q. That is the date that it is entered in the disaster book before you?

A. Yes, sir.

Q. This is your record of the disaster?

A. Yes, sir.

Q. When did the defendants first receive any knowledge or information respecting the disaster and in what shape did it come?

A. The first notice of — disaster was probably taken from a daily newspaper that the vessel had anchored in Five-Fathom Hole, Bermuda, leaky, on the 15th inst.

Q. Have you any idea when that information was received?

286 A. The letter from the underwriters' agent to Mr. Shered, the president of the Insurance Company of the State of Pennsylvania, February 16th, is referred to us, Mr. Shered being the secretary of the board of underwriters of Philadelphia, to whom all such letters are written.

Q. That letter was written by whom?

A. By the underwriters' agent at Bermuda.

Q. It came by mail, I suppose?

A. Yes, sir.

Q. Is there telegraphic communication between Bermuda and the United States?

A. No, sir.

Q. I suppose the mail brought the first information?

A. Undoubtedly.

Q. And the first information, then, was given in the newspapers of the press of about when for the first time?

A. I should say that the first information was given on the 16th of February, 1882. She put into Bermuda February 13th.

Q. Does it show where she received her damage? She put into there as a near port of refuge. Did you receive any information respecting where she received her damage or the nature of it?

A. (Referring to book:) "Ship 'Obi' sprung a leak on the way from Batavia to Boston; rudder was broken; her stem was shattered; she lost sails, etc., and had five and a half feet of water in her hold."

Q. Where did she encounter the gale?

287 A. I don't know.

Q. Have you got any protest of the master showing where she encountered the gale?

A. We probably have not, because as well as a partial loss it was a general average.

Q. But you have something in the general-average statement respecting it, haven't you?

A. Not a thing; it is not customary.

Q. You have nothing, then, but certificates of the general average?

A. That is all.

Q. Where was the general average made—at Bermuda?

A. No; it would be made at the port of destination—Boston.

Q. Do you know who the average adjusters were?

A. (Referring to paper:) From our papers I cannot tell with certainty, but an adjuster named Theodore W. Gorr, a partner of Winship Bros. & Gorr, was sent out to Bermuda with full authority from the owners of the vessel to manage the case.

Q. The vessel was owned in Boston?

A. The vessel, I should imagine, was owned in Boston.

The MASTER:

Q. You were asked in relation to the "Obi" who effected this insurance—yourself or your agents?

A. Our Boston agent's letter of June 8th, 1881, suggested that the lines by vessels from the East Indies should be reduced on vessels arriving after September 15th, and they mentioned by

288 name the "Oakland," the "Obi," and the "Hercules" as likely to arrive in the United States after that date. On June 8th, 1881, we requested them to reinsure our excess for $25,000, per ship "Obi."

Q. You were asked to give the correspondence advising reinsurance on the "Adele?"

A. (Referring to papers:) Under date of January 29th, 1883, our agent in Montreal, Mr. Hampson, writes:

"Enclosed herewith please find applications of the St. Lawrence Sugar-Refining Company of policies to cover shipments expected under credits No. 304 and 311 of the Canadian Bank of Commerce by the German barque "Adele" and the other ship, "Hallgerda," respectively.

"The Java shipment per 'Adele' will be invoiced at Batavia subject to correction by polarization on receipt of samples in New York, and the St. Lawrence Company wishes to be insured upon the correct invoices, be it less or more, but they say it will not vary more than five per cent. one way or other from the Batavia one, to which please give your approval when acknowledging receipt of this. The 'Adele' is expected to sail in February and the 'Hallgerda' early in April, and I will immediately seek reinsurance, looking to you for

$5,000 by each vessel in Philadelphia. Both vessels have been accepted, in accordance with your telegrams of the 12 and 15 inst., and, I trust, will deliver their cargoes in good order. I do not like the burden of reinsurance, but as we have had the choice of saying yes or no to these vessels the case is somewhat different from
289 the "Yorkshire." What lines do you care for? Suppose twenty or twenty-five thousand by the 'Adele' and fifteen thousand by the 'Hallgerda?'"

On February 1st, 1883, a letter was written by this company to Robert Hampson:

"We will secure the reinsurance of $5,000 each by the 'Hallgerda' and 'Adele,' and we will thank you to reduce the lines to $15,000."

February 6th, 1883, Mr. Hampson writes, among other things:

"Regarding reinsurance by the two vessels recently covered, 'Adele' and 'Hallgerda,' reinsurance has been secured as follows: Through Scull and Bradley, $31,500; Marshall J. Smith, $15,000; Great Western Insurance Company, $10,000; your own line, etc., $20,000, making a total of $76,500, leaving to be obtained $37,500; amount of policies, about $114,000."

The WITNESS: In Mr. Hampson's April accounts the various amounts of reinsurance placed by him are declared and paid for in that account. I would say that Mr. Hampson's accounts are the only advices we have of the particulars of reinsurance placed by him.

Q. The amount that was reinsured by the complainants here was placed by yourselves in Philadelphia, I suppose. Hampson did not have anything to do with that?

A. No, sir.

Q. Were they placed by yourselves here?

A. They were placed by ourselves.

Q. Has the business of the defendants from ports and places in Europe to Canada been large or small?

290 A. It has been large.

Q. During the years '81, '82, and '3 was it large?

A. If my memory serves me right, it was.

Q. What were the principal ports that you were taking risk from in Europe for Montreal or Quebec?

A. Almost every port in Europe.

Q. Were you doing that business on what is known as open contracts?

A. Sometimes on open contracts and sometimes on special risks accepted from day to day.

Q. I suppose that you were doing a large business in the shape of merchandise going into Canada from ports in Europe?

A. Yes, sir.

Q. For example, the house of Gillespie, Moffatt & Co. is a very large house there?

A. I have no knowledge at all of the standing or size of that house.

Q. Were you doing a large business for Gillespie, Moffatt & Co. in the shape of imports from Europe?

A. I cannot tell you that. I cannot tell you the proportion of their business we were doing, whether part or the whole.

Q. Could you ascertain?

A. I could not, unless by appeal to Gillespie, Moffatt & Co.

Q. Did you have open contracts with them to cover their shipments?

291 A. Probably; yes, sir.

Q. You were doing a regular business from ports in Europe up the St. Lawrence to Montreal—steamships and sail vessels?

A. Yes, sir.

Q. Did you limit your business to any particular class of vessels?

A. Only to those approved.

Q. What do you mean by approved?

A. Approved by our agent in Montreal.

Q. Did you allow him to take risks on any vessel, without regard to its character, in Lloyds Register, for example?

A. Under open policies all vessels reported have to be accepted, unless the unseaworthiness of the vessel can be proved by the insurance company.

Q. Explain that to me, if you please.

A. Under open policies which cover shipments simultaneously with advices or which cover shipments without advices having been given by the assured the vessels cannot be criticised unless the company can prove that they are unseaworthy, which, as you know, is a very, very difficult matter.

Q. You mean by that to say that you had some contracts with some of your dealers which bound you to them for all shipments made as soon as made, provided the vessel was seaworthy?

A. All contracts, if they be open policies, are covered in that way?

Q. You did not limit your dealers to any particular sum on any one vessel?

292 A. That would depend entirely, as I explained yesterday, on how the policies were placed.

Q. I am speaking now with regard to open contracts. Where you give a man an open contract he comes to you and puts it in this way: "I want you to cover me from ports in Europe to Montreal via the St. Lawrence, the goods to be valued at five dollars on the pound sterling."

A. As I told you yesterday, the business of Montreal is done in a different way from any place in the world that I know of. The open policies are mostly placed under letters of credit—that is to say, an amount is stated and a note is taken for the premium at a certain nominal rate. The note is taken for that premium, and the policy if exhausted without using up all the premium paid, a return of the premium is made. If it uses up more of the capital and less of the premium the policy is balanced, in other words, after the shipments made under that letter of credit are received.

Q. Then I understand you by that as saying that you grant an open policy to one of your dealers in Montreal, say $100,000, and they give you a note in a nominal sum premium; then he would go on and report under that open policy until he consumes the

amount that has been named, or until the note is consumed and you make another?

A. But there is also a provision in that policy that it shall run if if the amount is exhausted and shall be made up by the party insuring.

293 Q. So that you are bound to him for all of his shipments?

A. We are bound to him for all his shipments.

Q. Whether he has advices of them or not, the instant the risk is conceived you are bound?

A. Yes, sir; we are bound the instant the risk is applicable to the policy.

Q. And you are bound without regard to the amount, so that you must protect yourself by reinsurance?

A. Sometimes we are and sometimes we are not.

Q. I mean under such policies.

A. No, sir; sometimes there is a limit stated in the policy—a limit on lines that we carry on various vessels.

Q. Sometimes you have an unlimited sum, then, and sometimes you have a limited sum?

A. Yes, sir; exactly.

Q. That is to say, you will not be bound beyond a certain sum on any one vessel? That is what you mean by a limitation?

A. Yes, sir; unless otherwise agreed at the time of the endorsement of the risk.

Q. Be kind enough to refer now to your disaster record and find all that is stated respecting the brig "Budstikken."

A. There is an entry of "total loss." The date of the entry in the disaster book is November 27th, 1882.

Q. What information did the defendants have at any time, and when did they receive it, respecting the disaster?

A. Four newspaper slips are pasted in the disaster book.

294 One of them is dated Mont Louis, Quebec, on November 26th; "Barque 'Budstikken,' Norwegian, Hansen, sugar laden, went ashore last night; all hands were saved. The vessel and cargo will be a total loss. The 'Budstikken' was last reported at Falmouth, Jamaica, bound to Montreal." I should imagine that that was the first notice of the disaster.

Q. What is the date?

A. It is dated up in Quebec, November 26th, 1882. I cannot say when it appeared in the papers from which we generally cut such news.

Q. Are defendants members of the Maritime Association of New York?

A. I never heard of such an association.

Q. Is there an association in New York, if you know, which aims to procure or receive information of maritime disasters and to send the information to underwriters speedily?

A. There is the Maritime Exchange of the City of New York, one whose aims is to report all the casualities that they can ascertain. The companies have nothing to do with it whatever beyond subscribing to it to receive the slips.

Q. The defendants are subscribers to that maritime exchange?

A. If my memory serves me, they are; yes, sir.

Q. Do you know or have you any information as to whether the defendants at any time received any news from the Maritime Exchange of New York respecting either the "Budstikken" or the "Obi?"

295 A. I cannot answer that question. We never see the slips that go to our New York office, nor do our New York agents know what risks are taken outside of their own agency.

Q. Will you be kind enough to examine your disaster record as to the "Etimologia" and state what you find reported on the subject of that disaster?

A. The first entry is, "Stranded at Workington; total loss." The date of the entry in the disaster book is December 13th, 1883. Then there is a newspaper slip—"Workington, England, December 12th, barque 'Etimologia,' Italian, Gambino, from Philadelphia via Falmouth, stranded at this port and will be a total loss." There is also another long newspaper slip about it of December 20th, dated Maryport—I suppose in England.

Q. That is all you have respecting that disaster, is it?

A. There is a reference made to certain letters from our correspondent in England—in London.

Q. Be kind enough now to turn to your disaster book and state what you have recorded respecting the barque "Yorkshire."

A. The "Yorkshire" is dated in the disaster book July 10th, 1882, "Maritime Exchange reports struck night of July 4th, 1882, 16 miles off Sable Island light, and was abandoned 5th instant. There is also a newspaper slip and the record that the protest was received July 28th, 1882, and figures of the disaster are given.

Q. Please turn to your disaster book and state what you have there recorded respecting the barque "Adele."

296 A. That is entered in February, 1883, between two entries of February 19th and February 16th, and the next entry after February 16th is February 22nd, and it so runs on. There is no date, however, given, though in the remarks the following is written: "Extract from letter of St. Lawrence Sugar-Refining Company, Limited, to Robert Hampson, dated February 15th; vessel stranded; steam-tug has gone to her assistance."

Q. Did she strand in the St. Lawrence?

A. No, sir; somewhere in the Island of Java. It proceeds: Messrs. Elmer, Houst & Co., of New York, think that the Jaccatrass—that is, one of the two kinds of sugar—were on board. This kind may amount to about 10,000 to 11,000 pounds sterling. There are also newspaper slips of the loss, one dated Batavia, May 19th, another dated Batavia, February 21st, another dated Batavia, February 15th, and another dated Batavia, February 28th; there are two others without any record of where they came from or in what papers they appeared.

Q. The item dated Batavia, February 15th, states what?

A. "Barque 'Adele,' German, from Batavia, for Sandy Hook, before reported ashore, had part of her outward cargo on board."

Q. Is that newspaper account a telegram from Batavia?

A. That is a cable from Batavia.

Q. Published somewhere in New York or Philadelphia?

A. Perhaps it was sent to London and then cabled from London to the New York Herald, or the New York Journal of Commerce, or any paper.

Q. What knowledge or information have you on the subject of notice of the loss to this company by the Maritime Exchange of New York? 297

A. We would never have had a notice from the Maritime Exchange of New York. Our agents would not have thought it worth while to send us notice of disasters from New York here, because, as I say, the risk was taken in Montreal, and they had no idea that we had anything on the barque "Adele." There is a Maritime Exchange of Philadelphia.

Q. Do you know whether the Maritime Exchange of Philadelphia sent you a notice respecting it?

A. There is no mention of such a thing here. Even if they did it would probably be after the newspaper report. It would not vary much. Every loss reported at the maritime exchange is at once published.

Q. Be kind enough to turn to the record in your disaster book on the steamship "Avlona;" state what you have recorded therein in regard to her.

A. That is dated November 1st, 1881: "Towed into St. Johns, New Foundland, by steamer 'Bristol,' with loss of rudder, and jettisoned a portion of the cargo."

Q. Is that a newspaper slip?

A. There is an entry here, "New York Herald, November 1st, 1881." I suppose that is the sum and substance of the wording of the newspaper slip regarding the loss.

Q. Is that all the information you have respecting it?

A. Yes, sir; except as to the build of the vessel, etc.

Q. Turn now to the case of the "Skerryvore" and say what entry you have regarding her.

A. That entry is dated January 15th, 1883, "abandoned at sea." There is also a newspaper slip, dated January 14th, with a little account of the disaster, stating that the barque "Lizzie Currie" picked up the crew of the barque "Skerryvore" and brought them to the port of New York. The "Skerryvore" was abandoned leaky on the 10th of January. It goes on to say that the barque "Skerryvore" was from Havana, December 25th, for Boston. 298

Q. Turn now to the entry of the barque "Ocean," in January, 1883, and state what you find there recorded in regard to her.

A. I do not think that was entered at all in the disaster book.

Q. Have you any information respecting the time that the disaster occurred?

A. Yes, sir; I think so.

Q. Please state what information you have on the subject.

A. The only information I have is the receipt for the loss as is

customary on a great number of losses that are paid through our agents.

Q. What does that receipt show?

A. This receipt shows that there was $3,371.08 partial loss on prunes and currants per barque "Ocean," from Trieste to New York.

Q. It does not state when the loss occurred?

A. It does not state anything about it. It is signed by the parties who insured the shipment with us under open policies. It states that the loss on prunes was so and so and currants so and so.

Q. Who is that receipt signed by?

299 A. Levy & Levis.

Q. Of where?

A. New York.

Q. When is it dated?

A. March 30th, 1883. The receipt states that it was insured December 22nd, 1882.

Q. What information can you furnish respecting the loss that occurred in the case of the barque "Impi" in August, 1882.

A. The entry is November 11th, 1882, "ashore at Lynn." There are two newspaper slips about the disaster; also reference is made to several letters received from our London correspondent.

Q. What are the dates of the newspaper slips?

A. They are not dated at all. One of them had no date and the other says the bark "Impi" from Queenstown, October 26th, for Lynn, which ran aground, had been floated and docked, &c., &c.

Q. When did that information reach the defendants?

A. I should imagine that it reached them on the date of November 11th, under which date the entry is made in the disaster book.

Q. Is it the practice of the defendants so soon as they get information respecting a disaster to make entry of it in the book?

A. By no means. Sometimes I give instructions that they shall wait until the end of a month to see whether any given disaster may prove serious enough to enter in the disaster book. We only enter those which are serious in their nature.

Q. Your book, then, cannot be relied upon to form an opinion as to when you first received notice of a disaster?

300 A. It would come pretty close. It will come always within three or four weeks; but, for instance, our agent in New York would advise that a steamer had arrived with her cargo damaged. We would not know whether our cargo was damaged or that of somebody else. We sometimes might take that as the first notice of the disaster, but six or eight weeks even after that time our agents in New York might pay a loss without consultation with us, and when it came in we would enter it in the disaster book. It frequently happens that way.

Q. You cannot draw any conclusion, then, from the entry made in your disaster book as to when the "Impi" grounded at Lynn?

A. There is a reference made here to a letter of Mr. Wendt, which was probably the first advice received from him that the damage was, so far, very small, dated November 14th. Ours was dated November 11th, so that one of those newspaper slips, probably, was put

in the disaster book the day or the day after the accident happened—probably the day after.

Q. What is the fact, if you know anything about it, as to the duty of your agents to notify you of a disaster so soon as knowledge of the fact comes to them?

A. It depends entirely upon what kind of an agency it is—what instructions we have given to them. Some agents cannot either accept risks or do anything whatever for us of their own free will without first consulting us. Other agents, again, have almost the power of the home office. In all matters which require the advice of the home office they ask it. In other matters their business
301 runs on as if they were a separate office entirely, with the exception that every risk is received by the home office with power of criticism, of course, always retained of their actions in any way or shape.

Q. Be kind enough now to refer to the case of the steamship "Peruvian," November, 1882, from Montreal to Liverpool.

A. That is dated December 5th, 1882. The Maritime Exchange report, December 5th, 1882, says: "Peruvian severely damaged by collision, and now lies sunk at Crossley Beach. The steamship in collision with the Peruvian is the 'Clan McClean.' She put back to Liverpool seriously damaged." There is also the notice that the "Peruvian" floated and an extract from the letter of our London correspondent saying that in the suit which had been instituted against the steamer "Clan McClean" judgment had been given in the admiralty court that the "Peruvian" was in fault.

Q. Returning to the ship "Matchless," state what record you have in regard to her.

A. That is entered in the disaster book June 18th, 1883. The Maritime Exchange report, 6th month, 18th, says: "Matchless foundered at sea; all hands saved." There are also three newspaper slips, one dated London, June 18th, and the others without date. Under date June 23rd, Hatfield, underwriters' agent at Batavia, says copy of extended protest will go forward by next mail.

Q. Where was the disaster first known, so far as you have information—at Batavia?

A. I should imagine that it was first known in the Philippine Islands somewhere. She foundered in the Straits of Sunda,
302 near the Island of Krakatoa.

Q. Are you able to give any information as to how soon knowledge of that disaster arrived in the United States?

A. I should say that the first knowledge of it in the United States was from this cable dispatch, dated London, June 18th, 1883, the same date as our entry in the disaster book.

Q. In an answer made by you yesterday to a question propounded by me you said that the China Insurance Company reinsured $5,000 on the excess of $70,000 in the "Matchless." Are you quite sure of that fact?

A. I should say it was correct; it is confirmed by the record in

our disaster book. I will again look the matter up, however, if you desire it.

Q. I wish to direct your attention to that fact especially because the complainants seem to be in possession of some information of a different character—that it was not on the excess of $70,000.

A. It is so reported by our Boston agency, under date 20th March, 1883, and in a letter of March 20th, 1883, they say: "We enclose memoranda of the reinsurance, per S. L. Crocker, 'Matchless and Peerless.'"—that is, the open reinsurance. I could confirm that by writing to our agency in Boston, from which that came. There are the particulars of the reinsurance, dated June 25th (handing paper to counsel). That is the way they come in and are entered in our blotter. Then the policies of insurance which those amounts represent are afterwards ticked off in our reinsurance blotter as received against each entry.

303 Q. Now that you have your disaster book before you will you be kind enough to refer to the Adam M. Simpson?

A. Yes, sir.

Q. She was from the East Indies to New York or Boston?

A. Yes, sir.

Q. Tell me what information you have respecting her. That was in the autumn of 1883?

A. (Referring to disaster book:) Yes, sir; Adam M. Simpson, dated in the disaster book January 2nd, 1884, with the remark, "Total loss in Palawan Passage;" three newspaper slips, one of which is dated Manila, January 5th. For newspaper account see page 302 (turning to page 302). There is the newspaper account of it. There is no date to the newspaper account; it just begins, "According to dispatches just received." It does not give the date of the newspaper; it is simply an account of the disaster.

Q. When did the defendants receive information as to the disaster, so far as your records show?

A. I should say January 2nd, 1884.

Q. Will you be kind enough to state how much insurance the defendants made for their customers on that ship on that voyage, and how much reinsurance the defendants procured on the same?

A. (Referring to book:) Open policy of insurance of the Boston Sugar-Refining Company for about $84,000, dated October 15th, 1883; afterwards filled in February 9th, 1884, for $65,000. Open application of the Bay State Sugar-Refining Company for about $27,500, dated October 13th, 1883. The particulars are dated

304 February 12th, 1884, and are for $22,344. The application, dated September 10th, 1883, covered $4,000 on the hull of the ship one year from that date. That is all the insurance.

There was one policy for $4,000 in the name of Jose De Besse Gamares. There was trouble about the policy and the policy was cancelled before we had to pay the loss, so that our reinsurers and ourselves were relieved of that $4,000 on that loss, which was stricken off our disaster book, but left there to show.

Q. You had, at the time of the disaster, at risk $91,344, if I am correct?

A. That is the figure; yes, sir.

Q. How much reinsurance did you have on the same, and with whom and for what amounts?

A. The reinsurances were: The American Insurance Company, $1,991; the Salem Insurance Company, $1,991; the China Insurance Company, $7,963; the Manufacturers' Insurance Company, $1,991; Boyleston Insurance Company, $2,986; the Ocean Insurance Company, $1,991; Merchants' Insurance Company of Bangor, $1,991; the Union Insurance Company, $1,991; the Boston Insurance Company, $7,963; Shoe and Leather Insurance Company, $2,986; Insurance Company of the State of Pennsylvania, $2,500; Hibernia Insurance Company, $5,000. The open reinsurance is stated there (handing paper to counsel), just as that other one was, with the date and with whatever excess was covered. It was covered on $57,000 excess in order to keep our line what it was eventually. By saying "open reinsurance" I am not speaking of open policy
305 reinsurance; I am speaking of the open special reinsurance—that is to say, of reinsurance which is on the excess of the sum which is retained by the Insurance Company of North America plus their open policy of reinsurance. If they reduced their line under $50,000 then that would be in the nature, of course, of a reduction under $50,000. This is on the excess of $57,500 and is special reinsurance and was afterwards completed by these amounts, which are exactly the same as I called off.

Q. When the defendants first had information respecting the risk that they were to take on the Adam M. Simpson they procured reinsurance to the extent of $82,500 on an excess of $57,500?

A. Yes, sir.

Q. Basing that reinsurance and that excess upon what they supposed would be on the vessel?

A. On these applications?

Q. I say on the whole risk that they would have.

A. Yes, sir.

Q. Which would have amounted to $140,000?

A. Yes, sir.

Q. And those reinsurances were effected with the American for the sum of $5,000?

A. Not to exceed $5,000.

Q. To the limit of $5,000 in the American; Salem, same amount; the Manufacturers', the same amount; the Boyleston, the same amount; the Ocean, the same amount; the Merchants' of Bangor, the same amount; the Union, the same amount; the China,
306 $20,000; the Boston Marine, $20,000, and the Shoe and Leather, $7,500?

A. Yes, sir.

Q. That was done somewhere about October 16th, 1883, I understand you to say, according to the papers that you have?

A. Yes, sir.

Q. Subsequently, on or about February 14th, 1884, the defendants having been informed that there was only $91,344 at risk on the "Adam M. Simpson," then they apportioned it?

A. Yes, sir.

Q. To the American, the Salem, the Manufacturers', the Ocean, the Merchants' of Bangor, and the Union each $1,991, the China and Boston each $7,953, and the Shoe & Leather and the Boyleston $2,986 each; all this on the excess of $57,500?

A. Yes, sir. The reinsurance was made on the excess of $57,500 and amounted to $82,500. $7,500 was reinsured under open policies of reinsurance and held by this company from the Hibernia Insurance Company and the Insurance Company of the State of Pennsylvania, and was so apportioned. All this special reinsurance was on the excess of $50,000 plus the open policy reinsurance.

Q. Will it be convenient for you to furnish the same information in regard to the "Arthur C. Wade" that you furnished respecting the "Adam M. Simpson," or would it be necessary for you to go and look that up?

A. It would be necessary to get all the papers out. That was a case of collision in which there was a suit, and all our papers were sent on at the time to be used in court for recovering against
307 the steamer that sank her, and probably are all there now, every thing; the applications, the insurance sessions, the interest—every thing whatever. The "Arthur C. Wade" was, September 18th, 1883, run down by the steamer "City of Columbus." I have the information in our ledger account showing the salvage received, the account of marine losses, as to the loss paid, the amount of reinsurance claims, reinsurance collected, and reinsurance on the blotters. I have notice of the reinsurance. I have every thing except the papers.

Q. With reference to the "Arthur C. Wade" you speak?

A. Yes, sir.

Q. You cannot tell how much insurance you made?

A. Yes, sir; I can.

Q. And what reinsurance?

A. Yes, sir. (Referring to book:) We made $68,206 insurance; reinsurance, $18,206, leaving our net line $50,000. She was from Caibarian to Boston. She was a brig. She is so entered here in this book as a brig, but I think myself she was a barque. I am pretty sure she was a barque.

Q. Do you know with what companies you made the reinsurance? If so, please state.

A. (Referring:) The China Mutual, $6,621; the Northwestern National, $1,655; the Delaware Mutual, $8,275; the Hibernia Insurance Company, $1,655. That is the amount reinsured.

Q. At what dates were the reinsurances effected?

A. The reinsurances seemed to have been entered in one of our reinsurance books under date of August 31st, 1883. I cannot
308 say whether the original insurance was dated on that date because it was under open policies of reinsurance which covered simultaneously with our own open policies. As soon as a risk is given to us we cover them, so that those are all open policies. It is simply dated here.

Q. Referring to your disaster book, tell me when you first had information respecting the disaster.

A. The newspaper slips contain no date. I should say, though, that the date was September 18th, 1883, the date of the entry in the disaster book.

Q. What do the newspaper slips say?

A. (Reading from slips:) 'Barque "Arthur C. Wade,' from Caibarian to Boston, was run into and sunk off Nantucket, during a fog, the night of September 13th, Thursday last, by steamer 'City of Columbus,' from Boston, at Havana, yesterday. All hands saved and landed at Havana. The A. C. W. had 950 hogsheads of sugar." That is one slip I have. The others are to the same purport, a little more full, showing where she was struck, between the main and mizzen mast, and how the crew escaped, and that the steamer drew off, the bark careened over and went down, with every stitch of canvas spread, in from twenty to twenty-five fathoms of water. Then there is a notice of the libel on the steamer by the owners of the barque in the sum of $130,000. Then there is a notice from our agents, to whose letter I can refer, stating the names of the counsel employed by us to urge our interests Then there is a re-
309 ceipt from the Boston and Savanah Steamship Company for the sum of $46,390.89 in cash, and notes in settlement of the balance of claims of $58,000 of owners of sugar shipped per barque "Arthur C. Wade," signed by the Insurance Company of North America, by Scull & Bradley, agents for insurers and subrogated owners of the said sugar, per "Arthur C. Wade."

(Referring to papers:) The open application of the Standard Sugar-Refining Company is dated August 29th, 1882, covering about $75,000 on sugar. The particulars of the risk are dated September 8th, 1883, $58,206, which was the total amount of insurance that the Insurance Company of North America had on that vessel. The reinsurance, I think, I have already stated; if I have not I can. It was done in the same way exactly.

Adjourned until Tuesday, March 10th, 1885, at 10 o'clock a. m.

310 *Testimony of Mr. Platt, Recalled, Offered by Complainants.*

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA.

TUESDAY, *March 10th*, 1885—10 a. m.

Present: The Hon. A. G. Brice, master, and Messrs. Sansum and Sabourin, of counsel.

Mr. PLATT, recalled and further examined as follows:

By Mr. SANSUM:

The WITNESS: Referring to my testimony, at page 81, in answer to the question as follows: "But you have something in the general

average statement respecting it, haven't you?" To which I replied, "Not a thing; it is not customary." I desire to explain that I supposed the counsel was referring to the general average certificates, if reference was made to the general average statement; the protest or part of it usually appears in the general average statement.

Witness desired to amend his answer at top of page 85, saying, "But sometimes we receive memoranda of reinsurance," so that the last answer to the question will read, "I would say that Mr. Hampson's accounts are the only advices we have of the particulars of reinsurance placed by him, but sometimes we receive memoranda of the insurance."

311 Mr. SANSUM: With respect to the ship "Matchless," be kind enough to look at and state the amount of money received by the defendants from the different reinsurance companies on that vessel for the voyage that she was lost on. My purpose in asking you that question is to enable you, if possible, to make a correction. I think you are in error when you stated that you carried $50,000 on that vessel.

A. No, sir; I don't think we are. We collected reinsurance as per our agents' account, which is in my hand. The Orient Mutual, $8,228, less a discount of 78.16, making a net of 8,149.84. Ocean Insurance Company, $4,115, less a discount of $39.09, making a net of 4,075.91. The Boston Insurance Company (Boston Marine, I suppose), 12,343, less discount, 117.26, making 12,225.74. The Shoe & Leather Insurance Company, $6,172, less discount of 58.63, making a net of 6,113.37. The Boylston, $6,172, less 58.63 discount, making 6,113.37. China Insurance Company, 12,343, less 117.26, making 12,225.74; State of Pennsylvania Insurance Company, 4,953.33; The New York Mutual, 4,953.33; The Hibernia, 9,906.67. Those amount to 72,793.21.

Q. Who was it that you insured in that case?

A. We insured the Standard Sugar-Refining Company on the cargo and the Rufus Cushman on the hull.

Q. How much did you insure on the cargo?

A. 121,488.

Q. How much did you insure on the hull?

A. $2,000.

312 Q. About what date was the money collected by you?

A. The receipt for the money signed by the Standard Sugar-Refining Company is dated September 7th, 1883; the cession of the interest from those people to us is the same day, September 7th, 1883. I don't see any discrepancy there. Of course, the interest was taken off that, amounting to $1,154.14. In other words, it was discounted at the rate of 95 one-hundredths per cent.

Q. Are you sure that in giving the insurance you are giving it for the right voyages? You know the "Matchless" made two voyages. Are you sure that there is not any mistake about the voyages?

A. I am sure that I am right.

Q. The reason I call your attention to that fact is that a letter

has been seen, written by this company or by some officers of this company, stating that the company carried only $15,000 on that risk.

A. It is not true. I don't know what officer could have written such a thing. We lost $50,000 on the ship "Matchless," as you will see by deducting 73,488 reinsurance from a whole line of 123,488, which leaves exactly $50,000 which we kept. I have before me the receipts for the loss and the application for insurance.

Q. You have no protest—no information respecting how she was lost that you can show, have you?

A. No, sir; I have no protest. I have here the bills of lading—invoices of the sugar. There is also a receipt for the hull loss. I have also a record in the disaster book.

313 Q. Please refer to the cession that was made by the Standard Sugar-Refining Company of Boston to the defendants and see whether it makes any reference to when she was lost.

A. I cannot state positively from the cession, because the cession is a mere matter of form.

Q. State what the cession shows.

A. The cession shows that she foundered in the Straits of Sunda June 16th, 1883.

Q. Referring to the ship "Lizzie H," from Singapore to Boston, in the summer of 1882, say about June, 1882, and November, 1882, state what risks the defendants took on her and how much they reinsured, if any.

A. The reinsurance was: State of Pennsylvania, $779; New York Mutual Insurance Company, $779; Hibernia Insurance Company, $1,558.

Q. How much of a risk did the defendants take in the first instance?

A. By the books it is reported at $10,746 for C. Wakefield & Co.; $36,671 for Temple R. Fay, of Boston, and $5,700 from the China Mutual Insurance Company. I will have the applications in a few moments to confirm those figures. The entire risk was $53,117.

Q. Be kind enough to refer to the E. A. Sanchez, from Havana to Boston, September 18th, 1882, and state how much of a risk the defendants took on her and how much they reinsured.

A. I find the reinsurance: China Mutual, $2,893; Northwestern National, $724; Delaware Mutual, $3,616; Hibernia, $1,447;
314 making a total of $8,680. The line was $58,680 from Willett, Hamlin & Co., of Boston. That was all. I have also here the line of insurance of the "Matchless." I have here the original application and the "particulars," and also the application on the hull. The original application was dated March 17th, 1883, covering the Standard Sugar-Refining Company for about $125,000. The "particulars" were dated June 25th, 1883. The amount declared was $121,488. The application on the hull was dated August 5th, 1882, and covered $2,000 for one year from August 5th, 1882, at noon.

Q. At the time that the Hibernia Insurance Company had these

contracts with the defendants were the defendants doing a hull business too?

A. Yes, sir.

Q. To any extent?

A. Yes, sir; a large hull business.

Q. What were you carrying on hulls generally?

A. We carried from the smallest possible lines of insurance up to about $25,000 on hulls. We have had cases where we carried $30,000 on hulls.

Q. Vessels engaged in what kind of trade?

A. Trade all around the world.

Q. Be kind enough to refer to the case of the "Maggie Horton," on a voyage, in the spring of 1882, from Havana to New York, and state how much insurance the defendants made upon that vessel on that voyage and how much reinsurance they made.

A. There was $66,855 insurance. They reinsured $5,620
315 in the China Mutual, $1,405 in the Northwestern National, $7,025 in the Delaware Mutual, $2,810 in the Hibernia; that was all.

Q. How much was the total amount of risk on that voyage on that vessel taken by the defendants?

A. The insurance was $66,855; the reinsurance was $16,860. I would like to explain that sometimes in the proportioning of open-policy reinsurances it is impossible to get the amount exactly right—that is to say, there may be a dollar or two or three dollars or four dollars out of the way when adding it up. In other words, now in this case you will notice that there was $66,855 reinsurance; $16,860 was reported. That is within five dollars of what it really should be. We arbitrarily add a dollar here and there to an open policy to make that amount up. That is the custom. We sometimes add to one open policy a dollar, to another open policy a dollar or two dollars to make the proportions come out exactly, because, of course, we divide the reinsurance *pro rata* among the open policies, so that you will frequently notice little discrepancies—indeed, in almost every case.

Q. State how much insurance the defendants made on the "J. D. Robinson," from Matanzas to New York, in the spring of 1883, and how much reinsurance they procured upon the same risk.

A. Insurance, $51,630; that was all; reinsurance, $1,630. It was just the excess of $50,000.

Q. Where was that taken?

A. It was reinsured under open policies.

316 Q. Be kind enough to refer to your records and state what they show respecting the insurance made by the defendants on the "General Roberts," from Cienfuegos to Boston, in the spring and early summer of 1883.

A. The insurance was $63,419.

Q. How much reinsurance?

A. The reinsurance was $13,419. I will say that the reinsurances under open policy from the West Indies are different in sailing vessels from steamers.

Q. Be kind enough to refer to your records and state how much insurance defendants made on the "Ardenclutha," from Calcutta to New York, in the spring of 1883.

A. The line was $67,200; the reinsurance was $17,200.

Q. State from the records of the defendants how much insurance they made on the steamer "Oramore," from Baltimore to Liverpool, on the voyage of about the 13th March, '83.

A. I will procure the line of insurance that we had on that vessel at that time and furnish it hereafter.

Q. Have you no records in your possession that will enable you to do it?

A. We may or may not have.

Q. How could you know — to pay losses unless you knew how much insurance you have made?

A. All the proofs have to be presented before a loss is paid. The steamship company had to certify that the goods on which the loss was claimed were aboard of the steamer at the time of the loss.

317 Q. Do you rely on the steamship company?

A. Entirely.

Q. And not upon the reports that are made to you by your dealers?

A. Our dealers make reports in this way: For instance, the steamer "Oranmore" belongs to the Johnston line of steamers; our agencies through the West will be insuring a great many shipments of flour, say, our agents in the South will be insuring great many shipments of cotton, our agents in New York will insure shipments of grain; we will insure in Philadelphia shipments of grain and in Baltimore shipments of grain on the steamer "Oranmore." Of course, in the West the freight agents cannot possibly tell when the cars containing the different merchandise will reach Baltimore, nor can they in New Orleans or Texas possibly tell when the cotton will reach Baltimore; consequently the insurance is made to cover our assured by reading by steamer or steamers of the Johnston line. Now, when the goods come to Baltimore the agents of the steamer ship as many as possible, say, by the "Oranmore;" they reserve the rest; they will split a bill of lading and reserve the rest of the shipments to go forward by another steamer of the Johnston line, sailing perhaps a week from date of the sailing of the "Oranmore." Then our assured have postal cards, which they send to the agents of the steamer in Baltimore; the agents of the steamer fill in those postal cards with the name of the steamer as soon as the press
318 of the work allows them to do so. They then forward those to the Insurance Company of North America here at Philadelphia, and frequently they are not received by the Insurance Company of North America until after the arrival of the vessels on the other side. That is the custom among insurance companies who are doing a large exporting business.

Q. Then the fact is that you never know how much you have on any one vessel?

A. We know only from an average, unless the steamer is speci-

fied. Then, of course, the insurance would not cover, except by the steamer specified. On Western shipments we know about the average that will come forward, and we then reinsure what we think necessary, and in no other way, as far as I can see, could the business be done.

Q. That is all guess-work, isn't it?

A. As soon as we hear that a line of steamers is of poor quality or poorly manned or anything of that kind, then we cut that line of steamers right off from our books and notify our agents throughout the West to decline shipments by that line. We keep our lines about the same. We sometimes carry a hundred thousand and sometimes we carry 75,000 and sometimes 50,000; sometimes 40,000; any line whatever.

Q. How are you going to know — to make a reinsurance on the "Oranmore?"

A. I could show you in a moment.

Q. Please explain it so that it can be recorded—how it is made and who makes it.

A. One of our clerks is instructed to come to me daily with a memorandum of any lines of steamers exceeding $15,000—
319 anything exceeding $15,000. He brings those memoranda to me. If we want reinsurance I say to him, Have such and such a line reinsured by such and such a vessel, because, in my judgment (though I do not say this to him), we will have a large line reported by that vessel. That you can only tell from experience of such things. Then he reinsures a certain amount—that is, our clerk here will do so. We may reinsure so much by even the best class of vessels as will reduce our line to $5,000 or to zero.

Q. Why?

A. Because we want to be protected on the probable line that we will have on that vessel, and if we place special reinsurance flat—that is, declaring the amount as soon as any risk by the vessel comes forward to us—it will wipe out all our line, and we give away all the premiums that we might have on those risks; and yet, again, the chance might be that we would have, instead of $5,000, $75,000.

Q. You mean that you would retain $75,000?

A. Yes, sir; but in the long run I can tell pretty well what the line will average—about what proportion of insurance, in other words, we will have on the vessel.

Q. I see that in this paper which the defendants sent in response to the complainants' request you state that the defendants insured $86,089 on the "Oranmore" from Baltimore to Liverpool on her voyage, about March 13th, '83, and that you reinsured $26,000 of it. I desire to know where you got that information.

320 A. If that is the case our clerk has made up the line on the steamer "Oranmore," and I can get it from our books. I will furnish that information hereafter.

Q. I wish now to draw your attention to the voyage of the ship "Matchless" in April, '82, and beg you to refer to your records and ascertain how much insurance the defendants made on that vessel

on that voyage and how much reinsurance they made upon the same.

A. The line was $71,333, as taken from the open reinsurance policy book, and the reinsurance was $20,000.

Q. Please refer to the ship or vessel called The Mt. Washington, in June, '81, from some point in the East Indies to New York, and state how much insurance and reinsurance there was upon her.

A. The insurance was $137,902.

Q. How much reinsurance?

A. The reinsurance protected the company up to $160,000.

Q. You made $160,000 reinsurance?

A. No; there was $80,000 reinsurance made on the excess of $80,000, which was completed *pro rata* with all those reinsurance companies.

Q. You made $80,000 on the excess of $80,000?

A. No; $30,000 of that was made on the excess of $80,000 and $50,000 was made on the excess of $110,000.

Q. Be kind enough to refer to the case of the ship "Atlantic," in December, '81, or between December and February, from Java to Boston, and state the amount of insurance.

321 A. The line was $118,968.

Q. How much did you reinsure?

A. The reinsurance was $30,000 under open policy and the excess of $80,000 was reinsured.

Q. The reinsurance was $30,000 on what excess?

A. The open policy reinsurance was on the excess of $50,000 or as per open reinsurance policies.

Q. What do you mean by " or as per open reinsurance policies?"

A. What I mean to say is that if that was the excess named in the open reinsurance policies it was on that excess. It was on the proper excess.

Q. I want you to tell me from the defendants' records about the voyage of the bark "Payson Tucker" in June, 1882.

A. The amount of insurance was $56,793.

Q. Where was she from?

A. Porto Rico to Boston.

Q. How much did the defendants reinsure on her?

A. $6,792.

Q. Be kind enough to refer to your records of the ship "Margaritha," from the East Indies, Ilo Ilo, in March, 1882, to the United States.

A. The amount of the insurance was $196,905. The reinsurance was $20,000 under open policy on the excess of $50,000 and $127,500 on the excess of $70,000, making $147,500.

Q. I wish you to refer to the ship "Elizabeth," from Manila to Boston, March, 1882.

A. We had $101,640 on her; $20,000 reinsured under open policy on the excess of $50,000, and the excess of $70,000,

322 $31,640.

Q. Then I see you had $51,640 reinsured altogether?

A. Yes.

Q. Will you kindly furnish me some information respecting the bark "L. E. Cann" in March, 1882? I wish to know how much insurance you made on that vessel.

A. I think it was $64,000.

Q. She was from where?

A. From Vera Cruz and Teckaluta, in Mexico, to New York. The reinsurance on that vessel was $28,500. Those were all special reinsurances. We had $55,305 on the cargo of the bark "L. E. Cann."

Q. I think you said you could not answer about the "Tonawanda?"

A. No, sir.

Q. Have I asked you anything about her?

A. No, sir.

Q. Is the ship "Maryland" in a regular line from Norfolk to Liverpool?

A. No; there are no lines of sailing vessels nowadays.

Q. See, if you please, how much of a risk, according to your records, the defendants took on her on the voyage from Norfolk to Liverpool, in January, 1882, and then show, if you please, how much reinsurance they made.

A. $120,120 insurance. We had $60,116 reinsured on her.

Q. Refer now, if you please, to the steamship "Zealand," about April 21st, 1882, from New York to Liverpool?

323 A. That was $145,289.

Q. How much reinsurance did the defendants make?

A. In addition to the $55,305 on the cargo of the "L. E. Cann" there was $5,330 and $585, making a total of $61,220 on the cargo, and advances.

Q. The "L. E. Cann" did not have anything on the hull?

A. Nothing on the hull. There was $80,000 of reinsurance on the Zealand.

Q. Was it on an excess?

A. $30,000 on the excess of $115,000 and $25,000 on the excess of $40,000, and $10,000 flat, special reinsurance. All those were special reinsurances. There was $45,000 of open-policy reinsurance on the excess of $70,000. That is $110,000 of reinsurance.

Q. Name the excesses, if you can conveniently.

A. There was $30,000 on the excess of $40,000, $5,000 of which was afterwards cancelled, leaving $25,000, and there was $30,000 on the excess of $115,000. There was $80,000 of reinsurance.

Q. On the whole cargo?

A. On the whole cargo.

Q. And you had how much at risk?

A. $145,289 at risk.

Q. Pass, if you please, to the "Grace Bradley," from Havana to Boston, in December, 1882, and tell me how much insurance you had on her, and also how much reinsurance you made on the same.

324 A. We had $59,451 insurance on the "Grace Bradley" and $9,450 reinsurance.

Q. Pass now to the "Galatea," from Cebu, in the Phillipine Islands,

to New York, July, 1882, and tell me how much insurance you made for your dealers on that vessel, and then how much reinsurance you made on the same.

A. We had $102,663 insurance, $20,000 of open-policy reinsurance on the excess of $50,000, and $42,663 special reinsurance.

Q. Do you think you could conveniently put your hand upon a record showing how much insurance the defendants made on the steamship "Renfrew," from Boston to Calais, about September 20th, 1882?

A. Yes, sir (referring); we had $66,000 reinsurance on the steamer "Renfrew." Our insurance was $116,889 on the cargo, with $234 on grain bags.

Q. Therefore the whole amount of insurance made by the defendants was how much?

A. $117,123.

Q. Be kind enough to turn to the ship "Annie M. Small," from Manila to New York, October 30th, 1882, and state how much insurance the defendants made on that ship on that voyage.

A. $102,615 insurance on the cargo, hull, and freight.

Q. How much did you have on the hull?

A. I cannot say from this book. I should judge we had about $10,000 on the hull.

Q. How much reinsurance did you make?

325 A. $20,000 under open policies on the excess of $50,000 and $32,615 special reinsurance.

Q. Please refer to the ship "Tonawanda," from Mobile to Liverpool, January 27th, 1882.

A. We had $20,000 on the hull of the "Tonawanda." We had $48,900 altogether on that vessel. We had $10,000 reinsurance. In the statement which we sent you the clerk informs me that in looking in the hull book, as he was not familiar with it, he overlooked the fact that we had $20,000 on the hull.

Q. So you had how much in all?

A. We had $48,900 insurance; reinsurance, $10,000.

Adjourned until to-morrow morning at 10 o'clock.

326 *Testimony of Platt, Recalled, Offered by Complainants.*

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

PHILADELPHIA, WEDNESDAY, *March 11th*, '85—10 a. m.

Present: Hon. A. G. Brice, master, and Messrs. Sansum and Sabourin, of counsel.

Mr. PLATT recalled and further examined by Mr. SANSUM:

Q. Respecting the steamer "Oranmore," you said yesterday, on page 123, that you could get the information from your books, you

thought, because your clerk must have made up the statement; if you can furnish it now please do so.

A. The insurance of $86,089 is correct, $80,089 being on merchandise other than cotton, and $6,000 being on cotton, which alone was applicable to the open cotton reinsurance policies, so that when the loss was collected from the reinsurers the line simply on cotton paid the loss on the cotton.

Q. I now direct your attention to a bill that the defendants sent to the complainants; state whether it has reference to the risk about which you now speak.

A. That is the risk in question; yes, sir. I would state also, in regard to the "Oranmore," that the reinsurance which was under $80,089 covered on merchandise specifically named, so that they could not be requested to contribute for the loss on cotton.

327 Q. How much do you say the whole loss on the cotton was?

A. 55 pounds six shillings and five pence, which was reduced into dollars and cents at the usual rate taken for such reductions. This amount included a fee in the case of one guinea. There were other losses paid on corn and on wheat.

Q. Bringing the sterling money into American currency, I suppose it would be $270.97?

A. Exactly; yes, sir.

By Mr. SABOURIN:

Q. On the cotton alone?

A. On the cotton alone.

By Mr. SANSUM:

Q. You say that there was $86,089 of insurance on property other than cotton and for $6,000 on cotton alone?

A. No; I said there was $80,089 of insurance and 6,000 only on cotton.

Q. Did the defendants contribute to the loss on the cotton on the "Oranmore?"

A. There being no line on cotton for the Insurance Company of North America because of the $6,000, which represented the whole amount on cotton, having been divided, as was proper, among those companies reinsuring the Insurance Company of North America under open policies on cotton specifically on the excess of $70,000, the Insurance Company of North America was obliged to give that $6,000 to those reinsuring companies and could carry no part of it themselves, because they had a larger line than $70,000 on

328 merchandise other than cotton, and were bound under their contracts of reinsurance to give away to these open-policy reinsurers whatever excess of $70,000 there might be on cotton to the extent of the whose open-policy reinsurance.

Q. Now I understand you to say, respecting the "Oranmore," that the whole loss on cotton amounted to $270.97?

A. Yes, sir.

Q. And that was only $6,000 on the cotton on board the vessel?

A. Yes, sir; insured by the Insurance Company of North America. If I can explain that more fully I will be very glad to do so.

Q. Now you divide that whole loss of $270.97 among the several companies who reinsured you on cotton?

A. Yes, sir.

Q. And in what proportion were you reinsured on cotton?

A. We were reinsured in exactly the sum of $6,000 with the following companies, and I will state their respective lines and the amounts received from them: Hibernia, $1,846, $83.38; Boston companies, $1,385, $62.53; Mobile Mutual, $923, $41.69; Northwestern National, $923, $41.69; Insurance Company of the State of Pennsylvania, our neighbor, $923, $41.68, making a total reinsurance on cotton of $6,000 and a total claim to collect of $270.97.

Q. Now those several policies on cotton were on the excess of $70,000?

A. Exactly; yes, sir.

329 Q. With respect to the "Mt. Washington," I do not understand your answers, at least the way they are recorded on page 124. My question was, first, as to the insurance which the defendants made, and you answered "$137,902," and the reinsurance I then asked you for and you said $160,000.

A. No; up to $160,000. I said the reinsurance protected the company up to $160,000.

Q. Then I asked you if you made $160,000 reinsurance and you said, No; there was $80,000 reinsurance made on the excess of $80,000.

A. $80,000 on the excess of $80,000, which would protect up to $160,000.

By the MASTER:

Q. So that you took a reinsurance for $80,000, distributed among those reinsurance companies?

A. That answer there in the middle of the page, where it says: "No; there was $80,000 made on the excess of $80,000, which was completed *pro rata* with all those reinsurance companies," should have embodied the answer which is below, and then should have read: "Of course, the $30,000 on the excess of $80,000 was filled by the line, being more than $110,000, and the balance of the special reinsurance, which was on the excess of $110,000."

By Mr. SANSUM:

Q. I would like to understand from you how much reinsurance you made on that vessel on that voyage. I understand that you made $30,000 on the excess of $80,000 and $50,000 on the excess of $110,000?

A. Exactly.

330 Q. Explain about the ship "Atlantic," page 124. You say the line of insurance was $118,968, the whole line taken by the defendants. I want to know how much reinsurance the defendants made on that line.

A. There was $30,000 of reinsurance under open policies and $38,968 reinsured under special policies.

Q. There is some indefiniteness about your answer respecting the insurance and reinsurance of the "Zealand," see page 128 of your testimony. I understand you to say, from all that I find in your answers on that page, that the defendants insured $145,289 on the "Zealand."

A. That is correct.

Q. I wish you to correct me if I am in error in the conclusions I draw from your preceding answers on the subject of reinsurance. The way I understand those answers is that the Insurance Company of North America reinsured $80,000 on that vessel on that voyage. Will you be kind enough to see whether I am correct or not, and if I misunderstand you please correct me?

A. As I make it, there was $110,000 of reinsurance, both open policy and that specially placed.

Q. I think you are still in error as to your statement and will be pleased to have you refer to your books for the purpose of verifying it.

A. There was $10,000 reinsurance in the Delaware, $10,000 reinsurance in the Hibernia, $5,000 reinsurance in the Boston Marine, $30,000 reinsurance in the Thames & Mersey, $10,000 reinsurance in the Manufacturers', an additional $10,000 reinsurance in the Delaware, $15,000 reinsurance in the Boston, additional $10,000 reinsurance in the China, $5,000 reinsurance in the Northwestern National, $5,000 reinsurance in the Insurance Company of the State of Pennsylvania, which I think you will find makes the amount I state.

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Q. Your whole risk was $145,289?

A. Yes, sir; some of those reinsurance policies covered cotton and some covered other kinds of merchandise.

Q. Where was the "Zealand" bound from?

A. You state in your question from New York to Liverpool. I do not think so.

Q. Do you mean to say that the whole amount of risk, including cotton and everything else, was $145,389, or is that exclusive of cotton?

A. The whole amount we had at risk was $145,289.

Q. That was the whole risk of your company?

A. Yes, sir.

Q. What was the risk on the "Cannonbury?"

A. The risk was $10,000.

Q. How much was the reinsurances?

A. $5,000. At page 16, where the question is asked, "By the same party?" and the answer is made, "By the same party," followed by the question, "Your agent at Montreal?" and the answer, "Our agent in Montreal," it should be corrected to read that the reinsurance in the Hibernia Company was placed in Philadelphia.

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On the 26th page, in the middle of the page, after the word sometimes, I would like to insert "in this way." On the 29th

page I would like the sentence commencing on the third line from the top to read in this way, "At any moment we can place $200,000 on almost any class of business."

A little further down in that same paragraph I would like it to read "If you won't take the whole line."

On page 35, the second line from the bottom, I would like the answer to read "But we did not know but what we might be called upon at any time to insure more than $50,000."

At page 51 there was a question as follows: "There was a loss of $21,819.90," to which I replied, "Yes, sir." It should have been 20,819.80.

On page 66 the question is "Have you anything here to show when the Hibernia was made?" I answered, "Yes, sir; I think so, if it was placed here." I would say the Hibernia's reinsurance was placed in Philadelphia on the 18th of October, 1881, and that the "particulars" were reported to that company December 21st, 1881, and that the reinsurance of the Royal Canadian Company of $5,000 excepted goods from Patras, and was placed free of particular average with English conditions; that the application of insurance sent to us by our agent in Montreal footed up to $82,300, but that the line was afterwards reported by Mr. Hampson, our agent in Montreal, as $82,319—a difference of $19 between the agency and the home office, which was accounted for in Mr. Hampson's accounts on file in this office.

333 At page 70, 8th line from the bottom, the sentence reads "and we might have any amount after she left." I wish that sentence to read "and we might have any further amounts after she left from other sources."

On page 71, 5th line from the bottom, after the word "business," I wish to add the words "for that company," making the sentence read "Because we gave him a great deal of business for that company."

On the 75th page, 7th line from the top, the sentence reads "The entry in the reinsurance blotter is $3,000, New York Mutual Insurance Company." I wish to add the words "placed by our New York agents." On the next line, after the words "Hibernia Insurance Company, January 6th, '83, $5,000," I desire to add the words "placed through Charles Platt, Jr."

On the 76th page, fifth line from the bottom, I wish to correct the figures $27,120 by adding the words "from Montreal, and $6,500 from our Chicago agency."

In the second line from the bottom of the same page, after that part of the sentence which reads "5,000 in the Hibernia Insurance Company under date of November 29th, 1882," I wish to add the words "placed with the rate open November 20th, 1882;" also strike out the word "blotter" and insert the word "books."

On page 78, where the sentence reads "The open policies were closed June 26th, the day after the others, for respectively Hibernia Insurance Company, $10,000; New York Mutual, 5,000; State of Pennsylvania, 5,000," I wish to add that this reinsurance was first requested by the Insurance Company of North America March

334 18th, 1883. The probable line under the open policies was notified to the companies reinsuring under open policies March 19th, 1883, and the particulars of the open-policy reinsurances were given June 26th, 1883.

On page 14, in the middle of the page, the question was asked "Where was it made?" referring to the reinsurance placed on the "Yorkshire" in the Hibernia Company. The answer was, "In Montreal," etc., etc. I wish to correct that by saying that that reinsurance was made through Charles Platt, Jr., in Philadelphia.

On page 100, 6th line from the bottom, Mr. Sansum asked the following question: "In an answer made by you yesterday to a question propounded by me you said that the China Insurance Company reinsured 5,000 on the excess of 70,000 in the 'Matchless.' Are you quite sure of that fact?" I answered, "I should say it was correct." I now wish to correct my answer and state that I did not say that the China Insurance Company reinsured 5,000 on the excess of 70,000, but that I said that the China Insurance Company reinsured 15,000 on the excess of 70,000, as will appear by reference to page 77 of the preceding day's testimony.

On page 13 the amount stated for the Boyleston Insurance Company of $5,553 should be $5,533.

On page 18, 4th line from the top, I answered, "My own idea is that they were all effected in Montreal, except that in the Delaware Mutual, which was placed at the home office, in Philadelphia." I was then asked, "Do you mean that they were all effected by your Montreal agent, except the Delaware Mutual?" I replied, "Yes, sir; exactly." I wish to correct that by saying that the reinsurance in the Hibernia Company was placed by our agents in Boston
335 with Charles Platt, Jr., under date of February 1st, 1883, and that afterwards the particulars of that reinsurance to the Hibernia were dated April 26th, 1883.

On page 12 of the testimony, 7th line from the top, the question was asked, "Can you ascertain that fact?" referring to the contracts of open policies with the Firemen's Fund Insurance Company. I could not answer that question at the time, but will do so now by saying that we had contracts with the Firemen's Fund at the time referred to, which was in October and November, 1883.

On page 20, 9th line from the bottom, the question is asked, "What is the whole amount?" referring to the case of the steamship "Avlona." I would say that my statement of to-day has already explained as to the line on that steamer.

On page 67, 4th line from the bottom, I would say that the fact that $42,319 was mentioned as the line on the steamer "Avlona" in the answer of the defendants has been explained by the statement made by me yesterday.

On page 87, 5th line from the top, the question was asked, "Did you allow him to take risks on any vessel without regard to its character in Lloyd's register?" referring to our agent in Montreal. I would say that the ratings in Lloyd's register are not followed in any case by the Insurance Company of North America, except as regards steamers, where a class of 100 A one is usually taken to

mean that the vessel fulfills the requirements of an insurance policy, but even that is sometimes no criterion as to its character.

Mr. SANSUM:

Q. What is the guide for the defendants in ascertaining the character of vessels that they are taking risks on?

336 A. The guide is our own judgment, based on experience as to build, metaling, if they be wooden vessels, and, if iron vessels, as to the quality of their material, when their boilers were last examined, what their crews are, the horse-power of the steamer, and numerous other things.

Q. Where do you get all your information from?

A. We get it either from Lloyd's books or books of like character, or from the reports of our own special inspectors, which are most usually followed.

Q. Take for an example a ship bound from Java to the United States. How do you know what her character is?

A. By our judgment of her as she appears in the books, but not from any ratings. I have seen vessels graded as low as two and a half which was far superior to vessels that were graded A one in red for 15 years.

Q. Have you never had any limitations upon your agents' authority in taking risks for you according to the ratings given by the English Lloyds or American Lloyds?

A. What agents do you refer to?

Q. Your agents.

A. Do you mean any agents?

Q. Yes, sir.

A. Under open policies from the West Indies, for example, to the United States there is a concession made to the assured by allowing them to charter vessels that grade one and a half or

337 better. To Montreal there is no such concession. There each vessel is judged for itself.

Q. Suppose a risk is offered you on a vessel from Barbadoes—for example, sugar to Montreal. How do you know what her character is?

A. By the books—by her build, by her metaling, where she was built, when she was built, what material she is composed of—entirely.

Q. Do you get all that information from the books as she is reported in them?

A. From one of the several books as she is reported.

Q. Do you allow your Montreal agents, for example, or your Boston agents, or your New York agents, to write risks for you without regard to the character or rating, as I will call it, of the ship?

A. If the judgment of our agents is that the risks are fair at rates named no question is ever made of such risks accepted by them.

Q. Then you give them as it were unlimited power in that respect?

A. We are obliged to give them almost unlimited power.

Q. Why?

A. Because under open policies for the most part all vessels are

bound to be accepted unless the insurance company can prove that at the time of taking on board the cargo which was insured by them that the vessel is in a unfit condition to take the same.

338 Q. By that you mean that where you grant open contracts of insurance to your dealers, whether at Montreal or Boston or New York or anywhere else, they cover all shipments upon all vessels, provided the vessels be seaworthy, for the voyage?

The MASTER: He has not said that.

The WITNESS: Not at all. That is just what I was going to say—provided, in the opinion of our agents, the vessel is fit for the voyage.

Mr. SANSUM:

Q. Is seaworthy, you mean?

A. Is fitted for her voyage.

Q. By a vessel fitted for her voyage don't you mean that the vessel is seaworthy?

A. Well, sir, there are many things included in the word "seaworthy"—crew, ownership, defective timber, and this, that, and the other.

Q. If a vessel has not a sufficient crew she is not seaworthy?

A. If a vessel has not a sufficient crew, in the opinion of a board of experts, she is not seaworthy, in my opinion.

Q. If her timbers are not sound she is not seaworthy?

A. If her timbers are not sound she may be perfectly seaworthy to make a summer voyage, which she might not be at another time of the year.

Q. You leave that all to the discretion of your agents?

A. Exactly, unless our own judgment of the vessel is re-

339 quested. The distinction as to vessels, if they look of poorer quality than is required as a rule by this company, is made in the rate of premium.

Q. So that you take an inferior vessel and charge a higher rate of premium. Is that what you mean?

A. It frequently happens that we take West India cargoes, and several cases have occurred recently where West India cargoes have been accepted and a quarter or a half per cent. higher rate has been charged for them, to return that quarter per cent. or half per cent. if the vessel proves to have been metalled, for instance, within a certain period. When the vessel arrives and the fact of her metalling within a certain time is discovered that half per cent. or quarter per cent., as the case may be, is returned to the assured. That is to prevent them from chartering vessels that seem by all the records to be inferior in their character.

Q. Have you any limitation upon your Montreal agent as — the time that risks shall be taken and the rates that shall be charged?

A. No, sir. Our Montreal agent is an exceptionally good one and in his discretion we rely almost absolutely.

Q. Take, for example, Mr. Hampson, at Montreal. Suppose he should write a risk on a vessel bound from Porto Rico to Montreal,

sailing, say, from Porto Rico in the middle of September, and the vessel rated B 2, would you confirm his action?

A. Well, sir, there is no such rating that I know of as B 2.

Q. Did you never know of any such rating?

340 A. Never.

Q. How long have you been in the business?

A. Going on 11 years.

Q. What are your ratings now in these Lloyd's books—English Lloyds as well as American Lloyds? I mean all the books that contain lists of vessels and their build, when they were built, how they are built, and which profess to rate them.

A. To tell you the truth, whenever I see a rating I look it up, because they have changed it so, and, as I said before, we never follow them at all. They are absolutely worthless to this company.

Q. What are the ratings, say within the last two or three years?

A. In the record of American shipping they rate them A1, A1 and a half, and I think that is the lowest rating they give. A1 and a half is considered by them to be a good vessel.

Q. Those are the only two classes that you find?

A. I think they have discontinued the granting of classes of A1 and a quarter and A1 and three-quarters entirely. They rate them in the Norwegian books and the Italian books. Some of the Norwegian books have such classes, I suppose.

Q. Practically, your agents in Boston, your agents in Montreal, and in New York have as much power as the principal office has here in taking and accepting risks?

A. Provided such power has been given to them.

Q. What is the fact in that respect?

341 A. The fact is that they are permitted to take these open policies and vessels reported under them and they report. As soon as they have received a risk they report that risk by application to the home office. If the opinion of the home office is that that is a poor risk a telegram or letter is at once sent to the agent, "Relieve us if possible of such and such a risk." As a rule, the agent answers back, "Such a vessel being reported under an open policy, impossible to cancel it." We then say, "In that case you must charge our assured an additional rate of premium," which sometimes is done. If it is possible to do it, it is done; if it is not, we have to let the risk go through.

Q. Can't you relieve yourself from such vessels by reinsurance?

A. Certainly, if we so wished. At the top of page 90 the question reads: "That is to say, you will not be bound beyond a certain sum on any one vessel; that is what you mean by limitation?" and the answer was, "Yes, sir; unless otherwise agreed at the time of the endorsement of the risk." I wish to add that there might be a limit on every policy, but that several different parties might insure shipments by the same vessel, so that a limit expressed in one policy might be exceeded ten times. As to the "John Baizley," April 14th, 1882, from Cardenas to the Delaware Breakwater for orders, the insurance was $105,070 and the reinsurance was $55,070, making a net line to the North America of $50,000. The

342 Bark "Helen Sands," February 19th, 1883, Havana and Sagua to New York; insurance, $66,980; reinsurance, $26,980; $16,980 being under open policy and $10,000 special reinsurance. Bark "Usko," Baltimore to Belfast, November 18th, 1882; insurance, $61,990; reinsurance, $25,383; leaving a net line of $36,607. "Alice Reed," from Singapore to the United States, in September, 1882, insurance, $55,980, reinsurance under open policies, $5,980, leaving a net line of $50,000.

Q. Had you any special reason for reducing your line on the "Helen Sands;" and, if so, what was it?

A. I know of no special reason for the reduction of the line of the "Helen Sands."

Q. Where was the insurance made and by whom?

A. It was placed in New York.

Q. By your New York agents?

A. Probably by request of the home office, but it may have been placed by our own agents on their judgment of the risk, which might not accord with ours.

Q. Why should your agents in New York reduce your line on that vessel?

A. In their judgment the vessel might have had for us a larger amount than they thought proper for us to carry as our net line.

Q. Thought proper for you to carry on that vessel?

A. On that vessel; yes, sir.

Q. What would be the reason causing them to form that judgment?

A. Indeed, that I cannot answer at this day. As I say, their judgment might have been different from ours in regard to
343 a risk. If the risk had come in without reinsurance, for instance, to the home office, the home office might have taken no notice of the line whatever, and have carried more than they ought to carry in this case. The steamer "Oranmore," insurance $86,089, of which $6,000 was insured on cotton, which was all given to the reinsurers under open policy, because they covered any excess of $70,000 that there might be on cotton up to the total amount of reinsurance, prorating on that excess. There was a special reinsurance of $20,000, making the total reinsurance $26,000, leaving the net line of the Insurance Company of North America $60,089. I find no such vessel as the "Genevieve Roberts." I find the steamer "General Roberts" just at the date you have mentioned—May, 1883. She was bound from the West Indies to Boston; insurance, $63,419; reinsurance, $13,419, under open policies; leaving a net line to the North America of $50,000. Steamer "Thetford," March and April, 1883, West Indies to Boston; line of insurance, $52,978; open policy reinsurance, $2,978, leaving a net line of $50,000.

Solicitor for defendants, in view of the statement this day made by Mr. Sansum, solicitor for complainants, that Mr. James Prevost, assistant secretary of the complainants, who has been in this city assisting and consulting with counsel for complainants since the opening of these proceedings before the master, is about to leave

this afternoon at, say, 5 p. m., and as solicitor for defendants
344 believes that the presence of the said Mr. Prevost is material and necessary for the whole defence of the defendants in this case, and that he may have to be interrogated by those defendants on some of those specific charges made against them more specifically in the bill of complainants and in the evidence adduced on behalf of said complainants, he now prays the master to notify said Mr. Prevost that he should remain here a reasonable length of time in order that he may be examined on behalf of defendants, and also that he be required to produce all letters, papers of any kind, or any other means of information he may have in relation to the dispute now pending between complainants and defendants; that if anything of such a kind is attempted to be adduced in New Orleans after leaving here, that complainants shall not be allowed to produce anything which could have been produced here, and which could or should either have been admitted or denied or explained or contradicted in the city of Philadelphia, where both the persons who know about all those matters and the papers and books and records concerning all those matters in dispute are.

The MASTER: Mr. Prevost is notified to remain here until the further orders of the master for the purpose of answering as a witness on behalf of defendants, and also to produce such books and papers as he may have in his possession here, and that may be called for, that will throw any light upon the case before us.

Solicitor for defendants prays the master to order said Mr. Prevost, assistant secretary, to obtain at once, if he has not got them now in his possession, all papers, extracts from books, letters,
345 reports, or information of any kind whatsoever which are in the possession of the complainants, whether here or in New Orleans, and if in New Orleans, and if they refer to the matters in dispute between the complainants and defendants, then that he should telegraph for them immediately and wait here until they come, so that the defendants may make use of them.

The MASTER: I decline to give the order, because it is in violation of the act of Congress in a case of this kind. Whatever he may have here the counsel for defendants have a right to have.

Solicitor for defendants now states to the master and to counsel for complainants that he will object to the introduction by complainants, after the master leaves here for New Orleans, of any evidence of any kind whatsoever adduced in New Orleans by Mr. Prevost or any officer of the company that they might, could, or should have now here in Philadelphia, so that a full and complete examination of all the matters in dispute between complainants and defendants could have been gone into, and that hereafter, upon such an attempt being made by complainants to introduce such testimony, solicitor for defendants shall object to the introduction of any such evidence or shall ask that the master on his report to the court, be required to return again to Philadelphia for the purpose of such investigation and the taking of such testimony, so as to give to these

defendants an opportunity to admit or deny or explain or contradict any and all the evidence taken in behalf of said complainants as defendants may deem proper and necessary.

Mr. Prevost, in accordance with the request heretofore made, is requested to remain for the purpose stated.

346 Examination of Mr. PLATT continued by Mr. SANSUM:

Q. I want you now to give me the steamship "Gen. Roberts," in June, 1883.

A. The "Gen. Roberts," in June, 1883, from Cienfuegos to Boston; the insurance was $64,613; the reinsurance was $14,614, leaving the net line of the Insurance Company of North America $49,999.

Q. Tell me about the "Bonnie Doon," April 21st, Cardenas to New York.

A. In April, 1883, the insurance was $55,543, and the reinsurance *was* under open policies was $5,543, which was all the reinsurance.

Q. The bark "Escort?"

A. From Formosa to Montreal, in April, 1883; the insurance was $72,000; the reinsurance was $43,500, leaving a net line to the Insurance Company of North America of $28,500.

Q. Can you state any fact tending to show why the defendants' line was reduced to $28,500 on the bark "Escort" on that voyage and under what circumstances the reinsurance was made?

A. The first notice of the risk was received April 16th in a telegram from Robert Hampson from Montreal, addressed to me, reading, "Name rate cargo sugar, American bark 'Escort,' Formosa, Montreal, about $66,000. Answer." To which I replied, on the 17th, "'Escort' four and one-half per cent., with average of seven per cent. upon whole shipment, provided reinsurance can be
347 had." Mr. Hampson's letter of the 26th of April states: "I have bound $60,000 by the 'Escort,' and I have the privilege of $12,000 more, which would make the whole amount of the credit —, or pounds sterling; 12,000 pounds sterling, at $6 to the pound, equals $72,000. The reinsurance placed by this vessel is Great Western, $10,000; Scull and Bradley, $13,500; Marshall J. Smith & Co., $15,000, and if you place the usual $5,000 in Philadelphia only $16,500 will be left. I should like to take the whole amount, and I would cheerfully return my commission on the twelve if you will assume it. Kindly wire me on receipt, when I will have the application made for $60,000 or $72,000, as you may think proper." Mr. Hampson's desire to accept that $12,000, I would state, was to oblige one of the best customers of this company in Montreal. His refusal to accept the risk offered by this bark from this customer would have, in all probability, entailed the loss of his policy.

Q. You mean the loss of the customer's business?

A. I mean the loss of the customer's business entirely. That is the first notice of reinsurance had. I would state, in addition, that it was Mr. Hampson's intention that the Insurance Company of North America should have as their line $16,500, instead of which the net line retained by the company was $28,600. The ship "Pannay" came next, from the West Indies, in March, 1883, from Ilo Ilo to Boston.

The insurance was $137,740, the reinsurance was $87,740, leaving a net line to the Insurance Company of North America of $50,000. The next was the "Augustin Kobbe," from Zaza, in Cuba, to New York, in September, 1883. The insurance was $93,779, the
348 reinsurance, which was all under open policy, was $43,780, leaving a net line to the Insurance Company of North America of $49,999.

Q. What is the next vessel you have?

A. The bark "Agate," from Singapore to Boston, in March, running up to June, 1883; insurance, $72,287; reinsurance, $20,000; net line to North America, $52,287. The next was the steamer "Jesmond," in June, 1883. I do not find that there was any voyage in January, 1883; in June, 1883, from Humacoa, Porto Rico, to Boston; insurance, $105,100; reinsurance, $55,100, leaving the net line of the Insurance Company of North America $50,000. I would like to explain in regard to the line for which I was asked on the steamer "Zealand," in April, 1882, that my own opinion is that the voyage of the steamer "Zealand" has been incorrectly reported to all the companies reinsuring the defendant under open policies. The risk entered immediately before the steamer "Zealand" was the steamer "Celtic," from New York to Liverpool, and the clerk, in making the entry in the open reinsurance book, has simply put two dots under New York and two dots under "Liverpool," as if it was the same voyage as that of the steamer "Celtic." I can confirm the voyage of that steamer immediately, if it is so desired.

Q. Please do so.

A. I will say that the steamer book contains four entries of the steamer "Zealand," from New York to Antwerp. On February 18th there was an entry in the steamer book, "The steamer 'Zealand,' from New York to Liverpool," the entry of which voyage was probably not completely stated and should have read "to Liverpool via Antwerp," which had undoubtedly caused the error of the
349 clerk who enters such risks in the open cotton reinsurance policy book.

Q. Does it make any material difference in the amount of risk taken by the defendants on the steamer "Zealand" on that voyage and the amount of reinsurance procured by the defendants on that voyage?

A. None whatever, sir; nor does it alter the fact that the open policies of reinsurance covered on that voyage, whether it was reported to Antwerp or whether it was reported to Liverpool.

Q. You wish, then, the amount of insurance that was made by the defendants on that voyage on that vessel and the amount of the reinsurance as you have hitherto reported them from your books to stand?

A. Yes, sir.

Cross-examination by Mr. SABOURIN:

Q. Were you in charge of the marine insurance business of the defendants from January, 1880?

A. I have been; yes, sir.

Q. From what time up to what time?

A. I have been practically in charge of the marine insurance business of the defendants for six years.

Q. Continually up to this time?

A. Continually up to this time.

Q. Then you are familiar with all the books and the risks taken and the reinsurances made and the losses paid and all the matters concerning the insurance business?

350 A. I am entirely familiar with every detail of the marine insurance business of this office, and also all matters of policy connected with the marine business of the company.

Q. What was the character of the risks taken by this company in marine business during the time you speak of, as shown by your books, including the disaster book?

A. The character of the risks was exceptionally good. All the risks which the books contained, with very few exceptions, could be pointed to with pride by the company, and the character of the risks was in a measure based upon the reputation of the company, which has for the past few years been able to secure a large share of the marine insurance business at rates which other companies could not secure.

Q. Were those rates remunerative to yourselves during all this period?

(Objected to as immaterial.)

A. Those rates were, taking the basis of years, generally remunerative. One year they might not be and another they would be.

Q. What was the general character of the vessels you insured on, as shown by your books and records, during the space of the time now mentioned?

A. The general character of the risks accepted by this company was exceptionally good during the time I have been in the employ of this company.

Q. I speak of the vessels specially.

351 A. The vessels by which the risks were accepted.

Q. Now will you please give us in a succinct form, *seriatim*, concerning each vessel mentioned by defendants in their answer to complainants' bill, the total amount of insurance, and by whom and through whom, with dates, the total amount of reinsurance, whether flat or on open policies, showing what line you kept on each vessel, with dates of reinsurance, amounts and names of the insuring companies, and through whom and where the reinsurance was effected, and also the amount of loss paid by you?

(Objected on the ground that the whole matter, all of the evidence called for by this question, has been already presented by the witness.)

A. I cannot give the amount of loss paid in every case.

Q. Please give it where you have it.

A. "Obi" is the first case. The insurance was placed, with a probable line of $45,000, June 7th, 1881. The particulars reporting

the amounts were received by this company October 18th, and November 8th, 1881, aggregating $44,999 reinsurance. On June 8th, 1881, we wrote to Foster and Scull to place the excess of $25,000. On the 16th of June, 1881, Foster and Scull advised open reinsurance as follows: Manufacturers', $5,000 on the excess of $25,000; Northwestern National, $2,500 on the excess of $25,000; Hibernia, $10,000 on the excess of $25,000. On November 25th, 1881, the reinsurances were closed for respectively $5,000, $2,500, $10,000, leaving the Insurance Company of North America's net line
352 $27,499. "Budstikken:" The open insurance was placed with this company for about $35,000, September 20th, 1882. The particulars of this insurance were dated October 24, 1882, for $18,958 on the cargo and a risk on advances $351. The reinsurance on September 23rd of $5,000 was placed with the Hibernia, through Charles Platt, Jr., at the request of Mr. Hampson, made to this company September 21st, 1882; $5,000 in the American, $1,750 in the Hope, $3,750 in the New Orleans, $2,000 in the Teutonia, and $2,500 in the People's.

The American Insurance Company's policy was placed by Mr. Hampson, through our agents in Boston, September 22nd, 1882. The Hope, New Orleans, Teutonia, and People's were placed by Mr. Hampson September 26th. The first advice of the disaster was dated at Mont Louis, Quebec, November 26th, 1882. The payment of loss was made December 29th, 1882. "Etimologia:" Open insurance was placed with this company under date of October 15th, 1883, for about $40,000. The particulars of this risk were reported under date of October 2nd, 1883, for $45,000. The reinsurance was Firemen's Fund, $5,000, placed October 23d, 1883, and the Hibernia Insurance Company, $5,000, placed October 23d, 1883, the net line of the Insurance Company of North America being $35,500.

The first entry in the disaster book was December 13th, 1883. One payment was made in December, 1883, which was a payment on account of the loss to oblige our assured, and in June, 1884, the final payment was made. "Yorkshire:" Risk on advances at $1,280 was reported July 6th, 1882; risk covering a half interest in
353 advances for $637 was reported under date of July 12th, 1882. This risk was afterwards cancelled, in regard to which we have a letter from our agent in Montreal, dated December 1st, 1882. The insurance on the cargo was reported for about $60,000 June 24th, 1882. The particulars of this risk, dated July 7th, 1882, were for $51,601. The reinsurance was the Hibernia Insurance Company, $5,000, dated June 29th, 1832, and under date of July 13th, 1882, Mr. Hampson, our agent in Montreal, advised that special reinsurance had been placed, but with the amounts left open by this vessel. This special reinsurance was reported afterwards, under date of July 28th, 1882, as follows: China Mutual, $7,378; Boyleston, $5,533; Ocean, $3,690; New Orleans, $10,000; Mechanics' and Traders', $5,000; People's, $2,500—a total reinsurance of $39,101. The date of entry in the disaster book is July 10th, 1882. The net line retained by the Insurance Company of North America was

$13,780. The line meant to be retained was $9,000 more, which is accounted for by the difference between the particulars of insurance and the amount as stated in the original application.

Q. The answer of defence of the line retained by them on the bark "Yorkshire" was $14,417, and you stated that from your books it is only $13,780. Please explain to us how that occurred.

A. I would say that those who looked up the insurances on which the answer was based had overlooked entirely the fact that the risk covering half advances, $637, had been cancelled, and that we have the proofs of that cancellation in this office and had proofs of
354 the cancellation at the time our answer was filed, and I would say that if more care had been exercised in looking this line up the parties who did so would have seen that we had already received a risk on advances from the New York agency which undoubtedly covered all the advance made on the freight of this vessel for that voyage.

"Adele:" On 7th of August, 1883, application on advances for $1,383. January 26th, 1883, insurance on the cargo for about $114,000, the amount left open awaiting particulars. May 7th, 1883, partial particulars of this risk, $47,392. August 7th, 1883, balance of particulars, $42,869. The dates to which I refer are the dates of the applications. The total line of the Insurance Company of North America was $91,644.

Under date of February 6th, 1883, Mr. Hampson advises reinsurance secured as follows: Through Scull & Bradley, $31,500; Marshall J. Smith, $15,000; Great Western Insurance Company, $5,000, which, however, was asked for prior to that time by Mr. Hampson, who requested us to place the same with the Hibernia through Charles Platt, Jr. The reinsurance in the Hibernia was placed with the amount filled in, but with particulars as to rate not given February 1st, 1883. Robert Hampson's letter of January 29th, 1883, gives the above data as to reinsurance placed by this vessel. On the 26th of April, 1883, the reinsurance is reported in Mr. Hampson's account as follows: China Mutual Insurance Company, $10,000; Boyleston, $5,000; Washington, $5,000; Ocean, $5,000; Union, $3,000; Merchants', $3,500; Hope, $2,500; Mechanics' & Traders', $2,500; People's, $2,500; New Orleans, $5,000; Southern, $2,500; Great Western, $10,000; Hibernia, $5,000, which was placed
355 through Charles Platt, Jr., making a total of $61,500. On the 5th of May, 1883, Delaware Mutual, $20,000; total reinsurance, $81,500, leaving the net line of the Insurance Company of North America $10,144. The amount of the loss was $20,819.80; date of payment in disaster book, November 8th, 1883; date of disaster in disaster book, February, 1883.

Q. Was it before or after the disaster that you took insurance for $20,000 in the Delaware Insurance Company?

A. It was after the disaster was dated in our disaster book and before any of the particulars had been given to us under the open application for the cargo for about $114,000. The reinsurance in the Delaware Mutual Company was placed with the warranty that no claim should be made upon the Delaware company for any propor-

tion of loss caused by accident which happened to this vessel between Batavia and the next port in Java which she used.

Q. Therefore the defendants did not know, up to the date that you received full particulars of the total amount of insurance, that they would not have up to $114,000 at risk?

A. Until the time that the final application, dated August 7th, 1883, was received the defendants supposed that they would have $114,000, and perhaps more, on the cargo, and which would have further increased by a risk on advances reported under the same date of $1,383.

"Avelona:" The applications were reported in October and November for $82,300. Mr. Hampson, however, has stated the line as $82,319. There is a discrepancy of $19 between the Montreal agency and the home office, which could be readily arrived at
356 by reference to the open-policy books and accounts received from Mr. Hampson. The reinsurance was placed October 18th, through Charles Platt, Jr., with the Hibernia Insurance Company—and the particulars of which were reported December 21st, 1881, to the Hibernia Insurance Company—for $5,000; Royal Canadian, $5,000; China Mutual, $10,000; Boyleston Insurance Company, $5,000; Salem Marine Insurance Company, $5,000; Washington Insurance Company, $10,000, making a total of reinsurance of $40,000. The policy of the Royal Canadian for $5,000 excepted goods from Patras and covered free of particular average, English conditions—in other words, free of particular average unless the vessel be stranded, sunk, burned, or in collision; consequently the Royal Canadian policy, being free of particular average in the payment of the loss, paid only their proportion of $8,325.43, which was general average only. The other policies paid both their proportion of the general average and the partial loss and paid their proportions of the amount of $8,665.74. The date of the disaster in the disaster book is November 1st, 1881. "Skerryvore:" Open application of insurance was dated December 16th, 1882, for about $40.000. The particulars of defendants' application were reported, under date of January 2nd, 1883, $58,569. December 21st, 1882, open reinsurance was placed through Scull and Bradley—China Mutual Insurance Company $15,000 on the excess of $30,000—and after that time a reinsurance was made by Scull and Bradley in the Boyleston Insurance Company of $5,000 flat.

The reinsurance on this vessel then stood as follows: Open-policy reinsurance, China Insurance Company, $2,857; Northwest-
357 ern National, $714; Hibernia Insurance Company, $1,428; Delaware Mutual Insurance Company, $3,570; open policies aggregating $8,569; $15,000 special reinsurance, placed originally, as above stated, December 21st, 1882, completed January 11th, 1883, in the China Insurance Company, for $15,000, and the Boyleston reinsurance, placed January 13th, 1883, $5,000, both of these latter completions being sent from this office, crossing on the way advice from Scull and Bradley as to this same reinsurance, reported by them in exactly the same way. The whole reinsurance then was $28,569, and the whole line of insurance was $58,569, leaving a net line to

this company of $30,000. The loss was paid by this company under date of March 3d, 1883, and the casualty was entered in the disaster book January 15th, 1883.

"Ocean:" The application was placed under date of December 22nd, 1882, $24,307, but was still open as to rate. The particulars, with the rate filled in, were dated December 30th, 1882, the amount being the same—$24,307. Through Charles Platt, Jr., the defendants reinsured $5,000 in the Hibernia Insurance Company, and through Catlin and Satterwaite, their agents in New York, they reinsured $3,000 in the New York Mutual. The total reinsurance, $8,000; total line, $24,307; net line retained by the Insurance Company of North America, $16,307. No entry of this loss was made in the disaster book, and the loss was in all probability unknown to the Insurance Company of North America until it was reported as paid by their agents in New York. The receipt for the loss is dated March 30th, 1883, and is for $3,371.08.

358 Bark "Impri:" Open application was dated August 26th, 1882, for about $45,000. The particulars of this insurance were reported under date of September 1st, 1882, for $39,690.

There was also an application on advances covering a thousand dollars. The reinsurance was placed first in the Hibernia Insurance Company, $5,000 on the excess of $30,000, through Charles Platt, Jr., August 28th, 1882; $10,000 on the excess of $30,000, through Catlin & Satterthwaite, the agents of the company in New York, on the same date. The particulars of reinsurance under date of September 19th, 1882, were as follows: Hibernia Insurance Company, $3,563; Orient Insurance Company, $7,127. The line then was $40,690; the reinsurance was $10,690. The net line retained by the Insurance Company of North America was $30,000. The date of the entry in the disaster book was November 11th, 1882. Part of the loss was paid in July, 1883, and the balance in August, 1883.

"Peruvian:" In November, 1882, a line aggregating $27,120 was reported from Mr. Hampson, our agent in Montreal; also a line of $6,500 was reported on this same vessel from our Chicago agency. This latter line was advised by postal cards in the manner as already explained by me. The reinsurance was placed with the Hibernia, $5,000, November 20th, 1882, through Charles Platt, Jr., and was for $5,000, but left open as to the rate. This reinsurance was afterwards closed on November 9th, 1882, for $5,000, so that the reinsurance was $5,000 and the line was $33,620, leaving a net line retained by the Insurance Company of North America of

359 $28,620. The date of entry in the disaster book was December 5th, 1882.

"Matchless:" The open application of insurance was dated March 17th, 1883, for about $125,000. The particulars under this open application under date of June 25th, 1883, were reported as $121,488. There was an insurance on the hull covering for one year from August 5, 1882, for $2,000. March 18th, 1883, defendants requested their agents in Boston to obtain special reinsurance on the excess of $70,000 by this vessel. This they did to the following extent: $10,000

in the Orient, excess of $70,000; $5,000 in the Ocean, excess of $70,000; $5,000 in the Salem, excess of $70,000; $15,000 in the China, excess of $70,000; $7,500 in the Boyleston, excess of $70,000; $15,000 in the Boston Marine, excess of $70,000; $7,500 the Shoe and Leather, excess of $70,000. Afterwards this reinsurance on the excess of $70,000 was completed under date of June, 1883, on the following amounts: Orient, $8,228; Ocean, $4,115; Salem, $4,115; China, $12,343; Boyleston, $6,172; Boston Marine, $12,343; Shoe and Leather, $6,172; total special reinsurance, $53,488, all of which represented the excess of $70,000. The open-policy reinsurances were first reported March 19th, 1883, and were closed under date of June 26th, 1883, for the following amounts: Hibernia, $10,000; New York Mutual, $5,000; Insurance Company of the State of Pennsylvania, $5,000; total open-policy reinsurance, $20,000, which, added to the special reinsurance, makes an aggregate reinsurance of $73,488. The line then stood as follows: Insurance, $123,488; reinsurance, $73,488, leaving a net line to the Insurance Com-
360 pany of North America of $50,000. The entry in the disaster book was dated June 18th, 1883. On the 7th of September the loss was paid on the cargo, and on the 8th of September the loss was paid on the hull.

Solicitor for defendants begs leave to defer his cross-examination on all the other vessels mentioned in the testimony-in-chief taken on behalf of complainants until to-morrow, so as to have an opportunity of examining the same, he not having been able to do so until this moment.

By Mr. SABOURIN:

Q. A letter dated November 23rd, 1883, being in reply to an enquiry by the Hibernia Company as to what amount of risk you carried on the "Adele," was mentioned in your testimony-in-chief, wherein it was stated that you, as the writer, carried $28,000 on that vessel, whereas your testimony given in this case shows that this company carried only $13,780. Will you please explain how this occurred?

A. My testimony given in this case shows that we carried $10,144, and I would say that the figures mentioned in that letter, dated November 23rd, to Marshall J. Smith & Co. were most hastily compiled, and were entirely based upon the hasty examination of the books on my part, which showed that the insurance was originally placed for $114,000.

Q. This letter was written after the loss?

A. This letter was written November 23rd, 1883, and the
361 loss had been entered in our disaster book some months prior to that time, so that the figures could have been verified without any question if the examination of the books had been more complete by myself.

Q. Are there steamers and ships on which you never insure? And, if so, please give names and lines of steamers generally.

A. There are several classes of vessels on which we never consider it necessary to reinsure, unless the line is most exceptionally large,

and by exceptionally large I mean an amount over $100,000 or $125,000. We could carry all the risks reported on the best steamers of the Cunard line or of the White Star line or any lines of a similar character. On sailing vessels our lines vary from the lowest possible amount of insurance, or zero, up to $70,000 or $75,000, and there have been many cases where this company has carried even larger lines. The lines are entirely dependent on the class of business, on the rate obtained, the character of the vessels, and so forth; and I would say that very few men's judgment is the same precisely as to any given risk. I know of many cases where we would take old vessels which were well known to us to be good risks where other insurance companies would positively decline such.

Q. The complainants state in their bill that your usual line of risk is $50,000. What are your lines of insurance, if you have any? Have you any given or usual line of insurance?

A. I would state that we have no usual line in this company. Some years ago the board of directors of this company gave
362 discretion to the officers to accept risks as they might see fit. This course is always followed in this company. The judgment as to lines and as to risks is left with the managers of the company, who confer together as to any one class of business and conclude about *the* what basis the excess of which to reinsure. As I have said, there is no usual line. An amount of $50,000, which appears in many of our policies, was arbitrarily decided upon for a reason that we had to make a line of excess of which to reinsure. $50,000 about represents what this company would carry, as a fair average, on their whole business on each individual risk, but that line varies very much at all times. The cotton reinsurance, open reinsurance, covers on the excess of $70,000; some reinsurances that we have cover on the excess of $75,000; some reinsurances that we have cover on the excess of $65,000; some reinsurances that we have cover on the excess of $40,000, and so on. There is no usual line of this company, nor has there ever been, to my knowledge, a line which this company would bind themselves in any way to set as their maximum line or as their minimum line.

Q. Did you know, either by yourselves or through your Montreal agents, the character of the vessels on which you had risks, whether under open policies or not, and was it always within your power to cancel objectionable risks on such vessels as you might deem unseaworthy or not good risks?

A. I would say that we based our acceptance of risks in Montreal on the vessels as they were reported in the different books
363 which we use for that purpose. It was conceded to our agent in Montreal that he should accept what risks his judgment showed were good. It would have been impossible for us to have declined risks under open policies on the mere ground of unseaworthiness, unless the unseaworthiness could have been proved at the time.

Q. Do not all policies of insurance on hulls made in this country contain a printed clause warranting that the vessels insured shall not use ports in the British North American provinces north of

Halifax, except in the Bay of Fundy, except between August 15th and May 15th, unless a special application and an agreement to that effect be made on each voyage?

A. Yes, sir; they all contain that clause or something similar in character. All vessels insured under policies covering hulls are allowed the liberty of using ports in the Gulf of St. Lawrence or in the British American provinces north of Halifax only between May 15th and August 15th. It is a well-known fact among all insurance companies, and has been well known to all insurance companies, that such is the custom among underwriters, and if underwriters choose to accept risks on hulls using the Gulf of St. Lawrence within the time between August 15th and May 15th, the assured are bound to report that fact to them, and the company can then, by charging an additional premium, allow them the privilege, or they can allow them the privilege if, in their opinion, at the time the risk is offered it is not dangerous, free of charge. It is a well-known fact that the trade in the Gulf of St. Lawrence is a dangerous one, and, as I say, it has been well known among underwriters for all time that I know of.

364 By the MASTER:

Q. If your agent took a risk in the Gulf of St. Lawrence at Montreal would you be bound by it between those months?

A. On hulls?

Q. Yes.

A. We would never take an insurance on a hull from our Montreal agency.

By Mr. SABOURIN:

Q. Has this insurance business on cargoes to and from Montreal proved profitable or not in your experience within the past six or eight years or longer?

A. Yes, sir; in my experience it has proved profitable, owing to the great skill of our agent in the selection of risks.

Q. What is your method in reporting, and when is it usual with you to report to companies reinsuring you under open policies, particulars of reinsurance?

A. The times vary very much. It is usual for us when we know that a line will exceed the amount which is stated in the reinsurance open policy—we will say on the excess of $50,000—it is usual for us, when we know that the line will run over $50,000, to report what is called a probable line of reinsurance to the reinsurers under open policy, being such vessel as may have such a line. The completion of that reinsurance is sometimes left until after the vessel arrives out for the reason that, owing to our methods of doing business, it is sometimes impossible for us to tell what line the reinsuring companies will have or what additional line will be reported on that vessel at any time, even after she has arrived out. Especially
365 in the outward-steamer business we always endeavor to make it a practice to delay the particulars of reinsurance until such time as we know that the line is closed absolutely and will not be

reopened, so as to occasion no trouble to our reinsuring companies, who very often do not carry the lines stated as the sum which shall not be exceeded in their open policies of reinsurance, but who reinsure the excess of a smaller sum than that so as to be themselves protected over an amount which is less than the amount named as their limit in an open policy. I can turn to a great many cases, I might say hundreds, where the line has been left in that way, and I can also turn to many cases where, after the vessel had arrived out, a very much larger line was reported to this company on the same risk—the same voyage. It is usual for us to give the particulars of reinsurance as soon as we can do so for our own proper protection.

Q. What is the difference, if any, between the clauses of special reinsurance policies placed flat and those placed in excess of a stated sum? And if there be any difference please explain the same and produce blank forms of applications of each.

A. (Witness produces same.) The special reinsurance application of this company for flat reinsurance contains a clause that "this policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary to the within policy, and payment of loss to be made at the same time" (marked "A" for identification). The form of application re-
366 insuring on excess contains the same clause as that, but in addition it contains a clause "To apply to the excess which the said company may have on all their various policies on vessels, freight, cargo, or profits, including specie or treasure, over $——, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed $——" (marked "B" for identification); in other words, a reinsurance on excess applies *pro rata* with all other insurance on the excess, but flat reinsurance does not so apply. The application reporting open-policy reinsurances contains simply the words "To the —— Company: Please enter on open policy made for this company the following vessels" (marked "C" for identification). The particulars of reinsurances are reported on a form which has been marked "D," whether it be special or open reinsurance, but it is not usual for us to use that form to report particulars of open reinsurance. However, it is sometimes done.

By the MASTER:

Q. What is the difference between the open reinsurance and special reinsurance?

A. Open-policy reinsurance covers simultaneously with policies of insurance, and special reinsurance is any arbitrary amount of reinsurance which a company wishes to obtain, and has to be accepted specially.

Q. Is that what you call flat?

367 A. No, sir; that is either on excess of flat and has to be accepted specially by the company or its agents from whom such reinsurance is asked.

Q. A reinsurance taken flat for, say, $10,000, do I understand you

to say that such would not prorate with other special reinsurances taken on excess?

A. In the case — flat reinsurance there is no clause warranting that this reinsurance shall be *pro rata* on the same excess, because there is no excess mentioned. The reinsurance is simply a stated sum. If a company reinsure that stated amount they are bound for that much, if it amounts to that risk, unless there be others of the same character made at the same time, when, of course, they would prorate.

Q. Suppose that in a vessel you have, say, $70,000 and you insure $20,000 flat, and then you reinsure over an excess of $50,000 on your open policy of reinsurance and the loss amounts to $19,000, does that policy called a flat policy pay it?

A. I would say that the flat reinsurance prorates with all the other insurance and reinsurances.

By Mr. SABOURIN:

Q. In the matter of losses on all the vessels mentioned in the bill of complaint, as well as on all the vessels inquired into in the evidence given by you on behalf of complainants, did all the reinsurance companies pay promptly and without objection the amounts reinsured?

368 (Objected to as immaterial.)

A. Yes, sir; all payments of reinsurance claims, so far as I know, were made promptly and without objection from any company except the Hibernia Insurance Company.

Q. Had many of your neighboring companies here in the city of Philadelphia reinsurance risks upon those vessels?

A. Yes, sir.

Q. And did they pay?

A. Yes, sir; in frequent cases. The Delaware Mutual Company, next door to us, holds our open-policy reinsurance—pays the losses on the mere presentation of the bill without comment. The Insurance Co. of the State of Pennsylvania pays in the same way. The Atlantic Mutual Insurance Company of New York pays in the same way, and all others almost.

Q. They made no comment upon the losses?

A. No comments whatever were ever made on the losses presented by this company.

Q. Did the complainants receive the risks taken by them or reported to them by you on your open policies without any comment?

A. The Hibernia Insurance Company accepted all the risks reported under open policies, with the exception of a few risks which they distinctly asked us, through Charles Platt, Jr., to either relieve them from or make reductions in lines. This we cheerfully assented to at all times, except when some was impossible. They had merely to make their request to us and it was fulfilled, although sometimes with the greatest amount of inconvenience to this company, our line frequently being increased to the extent of the reduction of
369 the Hibernia Insurance Company's line, which was at times

most inconvenient, and these reductions were occasionally made at times when it was impossible to secure the reinsurance which was cancelled in other companies.

Q. Can you state any of those risks on which you made reductions at the request of the complainants?

A. Yes, sir; I can.

Q. Please state them, so far as you know.

A. On the 2nd of May, 1883, a risk was reported under the East India open policy of the Hibernia Insurance Company on the ship "Sarah Hignett." The Hibernia Insurance Company requested that their line on this vessel should be reduced from $10,000 to $5,000, and the consent of this company was at once given to that reduction. On the 2nd of February, 1883, under the same policy, they requested us to reduce their line by the ship "Earl Granville," and we accordingly did reduce their line by cancelling $5,000 of their reinsurance October 24th, 1883. On the 13th of April, 1882, under their West India open reinsurance policy, they were excepted from any lines under the open policy of reinsurance, and accepted from this company a risk of $5,000 on the excess of $30,000, of course knowing that they reinsured this company from the West Indies on the excess of $50,000 under open policy.

By Mr. SANSUM:

Q. What vessel was that?

A. The bark "Sadie;" and this risk was accepted, I think, by the Hibernia Insurance Company, through Charles Platt, Jr., who received the risk without the knowledge of the home office or Insurance Company of North America, who knew of it only when the reinsurance was reported to them by their Boston agents
370 from our agents in Boston. On the 18th of October, 1882, the steamer "Illyrian" was excepted from the cotton open policy of reinsurance by the acceptance by them of $10,000 special reinsurance. The complainants accepted this risk without comment. On the 14th of August, 1883, the steamer "Andean" was excepted from the open policy, and the Hibernia Insurance Company accepted a risk from the defendants of $5,000 on the excess of $50,000. On the 20th of October, 1883, the steamer "Oranmore" was excepted under their open cotton reinsurance policy and the Hibernia Insurance Company accepted $5,000 flat reinsurance. On June 5th, 1883, by special application of complainants, the line on the bark "Pilgrim," which they might have been liable for, was reduced from $10,000 to $5,000, and the particulars of this $5,000 were reported to the complainants October 9th, 1883. Those are among the risks reduced or accepted from open policies by the complainants. In other words, the open-policy reinsurance of the complainants was relieved of those risks by the defendants.

By Mr. SABOURIN:

Q. Can you say whether or not the Hibernia Company at all times accepted without objection risks from the defendants on va-

rious excesses below $50,000, or flat below $50,000? And, if so, name them.

A. I can say so, sir, and I can name excesses without number. I was going to say, I can take them right off the reinsurance books at once. On the 13th of October, 1880, they accepted
371 a risk on the ship "Shelbourne," from Philadelphia to Dublin, $10,000 on the excess of $40,000. On the 25th of October, 1880, they accepted a risk of $7,500 on the excess of $35,000 per steamer "Barcelona," from Cadiz to Montreal. On the 26th of October, 1880, they accepted a risk on the ship "Waltikka," $10,000 on the excess of $40,000. On the same date they accepted a risk on the bark "Butshire," from Baltimore to Antwerp, $10,000 on the excess of $40,000. On the 26th of October, 1880, they accepted a risk on the steamer "Golden Horn," from Middleborough to Philadelphia, $5,000 on the excess of $25,000. On November 4th, 1880, they accepted on the ship "Antoinette," from Philadelphia to Waterford, $10,000 on the excess of $40,000. On the 13th of November, 1880, they accepted a risk on the bark "Muriel," from New Orleans to Cork for orders, etc., of $10,000 on the excess of $20,000. On the 16th of November, 1880, they accepted a risk on the ship "City Camp," from Baltimore to Belfast, of $10,000 on the excess of $40,000. On the 29th of November, they accepted a risk on the bark "Kate Burril," from Baltimore to Belfast, $5,000 on the excess of $40,000; and on December 22nd a risk on the ship "N. B. Lewis," from Philadelphia to Havre, of $5,000 on the excess of $40,000. On the 3rd of December they accepted $5,000 on the excess of $40,000 on the bark "Matts August," from Baltimore to the United Kingdom, etc. On the 4th of December they accepted a risk of $10,000 on the excess of $40,000 by the ship "Altai," from Baltimore to St. Nazaire. On the 8th of December they accepted a risk of $10,000 on the excess of $40,000 on the bark "Norwood," from Baltimore to Havre, and the
372 next day they accepted a risk of $10,000 on the excess of $40,000 on the steamer "Irthington," from Liverpool to Baltimore. On the 10th of December they accepted a flat reinsurance of $5,000 on the ship "Prince Arthur," from Bahia to Halifax. On the 10th of December they also accepted a risk of $2,500 on the bark "Governor," from Antwerp to Halifax. On the 14th of December they accepted a risk of $5,000 on the excess of $30,000 on the bark "Usko," from Baltimore to Queenstown. On the 23rd of December they accepted a risk of $5,000 on the excess of $25,000 on the ship "Livingston," from Philadelphia to the United Kingdom, etc., and on the 27th of December they accepted a risk of $5,000 on the excess of $75,000 on the ship "Gebroeders Smit," from Java to Boston. On the 4th of January, 1881, they accepted $7,500 on the excess of $40,000 by the ship "Lina," from Baltimore to Rotterdam, and on the same date they accepted $10,000 on the excess of $30,000 on the bark "Nueva Ignacia," from Pernambuco to Philadelphia. On the 5th of January they accepted $10,000 on the excess of $30,000 by the brig "Jeremiah," from Cardenas to Philadelphia. On the 12th of January they accepted $10,000 on the excess of $40,000 on the ship

"Semiramis," from Baltimore to Antwerp. On the 17th of January they accepted $5,000 on the excess of $40,000 on the steamer "Whitburne," from Philadelphia to Genoa. On the 21st of January they accepted $10,000 on the excess of $90,000 on the steamer "City of Austin," from Havana and Mantanzas to New York. On the 22d of January they accepted $7,500 on the excess of $30,000 on the ship "Theodore H. Rand," from New York to Antwerp.
373 On the same date they accepted $10,000 on the excess of $40,000 on the steamer "James Gray," from Philadelphia to the United Kingdom and Continent. On the 28th of the same month they accepted $10,000 on the excess of $40,000 on the ship "Cashier," from Philadelphia to Bordeaux, and on the 31st of the same month they accepted $5,000 on the excess of $40,000 on the ship "Peacemaker," from New Orleans to Havre. On the 9th of February they accepted $5,000 on the excess of $30,000 on the bark "Gloamin," from New York to the United Kingdom. On the 14th of February they accepted $10,000 on the excess of $40,000 on the schooner "Wallace J. Boyd," from Boston to Philadelphia. On the 15th of February they accepted $10,000 on the excess of $60,000 on the steamer "Claudius," from La Guayra, Puerto Cabello, Curacoa, to Philadelphia. On the 17th of February they accepted $10,000 on the excess of $35,000 on the bark "Rowland Hill," from Philadelphia to Antwerp. On the 23d of February they accepted $10,000 on the excess of $40,000 on the bark "Beppino Accame," from Baltimore to Rouen. On the 2d of March, 1881, they accepted $10,000 on the excess of $40,000 by the following vessels: Bark "Payson Tucker," Cardenas to New York; brig "Maria W. Norwood," Sagua to Boston; schooner "Martha N. Hail," Cuba to Boston; brig "Josephine," Cuba to Boston; schooner "Thomas J. Lancaster," Cuba to Boston; bark "Havana," Cuba to Boston; brig "Hyperion," Ceinfuegos to Boston; brig "Woodland," Cardenas to Philadelphia. On the same day they accepted $10,000 on the excess of $60,000 on the steamer "Belgenland," from Philadelphia to Antwerp. On the next day they accepted $10,000 on the excess of $30,000 on the bark "Icarus," from Pernambuco
374 and for Maceio to Philadelphia. On the same day they accepted $10,000 on the excess of $40,000 on the bark "Gamaliel." On the next day they accepted $10,000 on the excess of $40,000 on the schooner "Mary L. Peters." The next day they accepted $10,000 on the excess of $40,000 on the bark "Kiota," from Cuba to Boston. On the same day they accepted $10,000 on the excess of $40,000 on the bark "Ester," from Cuba to Boston.

From these examples which I have given it will be seen that the Hibernia Insurance Company accepted special risks from the defendants on various excesses in various amounts, which were received by them without comment. Payment of the premium on the reinsurances, as reported under these open reinsurances or flat reinsurances, was also received by them without comment.

Q. I wish to ask you whether those reinsurances—whether flat or open policies—were made all upon amounts which were less than a line of $50,000 held by you.

A. They were, with the exception of one or two, which will be shown in the list above stated.

Q. You state that those examples just now given by you cover two months' time?

A. Yes, sir; they begin October 13th, 1880, and continue until March 5th, 1881; and I would say that, if I am so requested, I can give a complete list of vessels on which the Insurance Company of North America made special reinsurances in the Hibernia Insurance Company on various excesses under $50,000 or over, as the case may be.

375 Q. Then you state that your books will show about the same proportions from the time when you have stopped giving the names of such ships up to the conclusion of your business relations with the complainants?

A. Yes, sir; I would say that the special reinsurances accepted by the complainants from defendants were almost of daily occurrence.

Q. And it is merely for the sake of brevity that you have not continued to give the names and amounts?

A. It is merely for the sake of brevity that I do not continue to go through the names and amounts of reinsurances so placed for every entry as to which complainants hold an application, or did hold at some time an application, from the Insurance Company of North America.

Q. Did the complainants at any time complain of those risks taken by them under a line of less than $50,000, and did they at any time complain that you did not carry what they allege in their bill to be your usual line of $50,000, on which they pretend to have at all times relied?

A. No, sir; they did not at any time make such complaint, and I would say that the reinsurances effected by this company on excess under what the complainants term the usual line of the defendants would number in amount the same quantity as on the excess of what the complainants state to be the defendants' usual line, $50,000.

Q. Did the complainants accept without objection reinsurance risks on vessels which are not complained of by them at any time prior to the voyages specified and complained of in their bill, and also mentioned in the evidence taken on their behalf in this cause?

376 A. Yes, sir; they did so accept lines both prior to the cases mentioned in their bill and in the defendants' answer, and also subsequently, without any comment whatsoever. They accepted such lines by the steamer "Peruvian," by the steamer "Avelona," by the ship "Matchless," and others which I cannot at present call to mind but which I could soon show.

Q. They had accepted risks many times previous to that on the same vessels when they had made voyages previous to those on which losses occurred, and they had never complained to this company of the character of the risks nor the character of the vessel?

A. Yes, sir; they had accepted without comment risks many

times on vessels about which I have been requested to give them information.

Q. Is this cause as a witness?

A. Yes, sir.

Q. Do you know what is the total amount of premiums that this company has paid to complainants since you have had reinsurance business transactions with them?

A. I can tell by referring to our books, but I can say in pretty round numbers that it was about $87,000.

Q. The complainants state in their bill that the defendants made a contract with them specially, as I have understood their bill to be, for the purpose of "securing for themselves a very large business and the complete control thereof," meaning to secure for the defendants. Was that the special object of your business transactions with the Hibernia Company?

377 A. I would say in reply that the addition of a reinsurance policy not exceeding $10,000 would make no difference whatever to the defendants as to the securing of a large amount of business, and I would also say that I have never heard of the Insurance Company of North America soliciting reinsurance for the simple purpose of securiug an enormous business, but that reinsurance is sought for by the Insurance Company of North America simply to keep what business they have on their books, and for no other purpose whatever, and to protect them as any conservative company should wish to be protected.

Q. The complainants further allege in their bill that the sums of money so insured "were very much larger than the sums of money usually insured by defendants in any one vessel in any voyage," and that to secure indemnity against unusual excess of loss you contracted with other insurance companies for reinsurance on the sums "that were or might be in excess of the sums usually insured by defendants." Is that statement of the bill correct?

A. No, sir; it is not correct. The defendants were obliged, if they wished to remain in the marine insurance business in the same manner in which they have been for a great many years, to accept whole cargoes or amounts of whatever size might be reported to them by their customers, and they never at any time accepted a whole line on a vessel for the simple purpose of procuring business.

Q. Have the defendants always taken, prior to their obtaining reinsurance with the complainants, large risks?

378 A. Yes, sir; they have taken large risks since the year of their incorporation and probably are insuring the same character of risks to-day that they were almost a hundred years ago, as can be shown at any time by reference to the books of the Insurance Company of North America.

Q. Have they procured reinsurance with the Hibernia Company especially with a view of enlarging their business, and has the business of defendants actually been enlarged or greater risks taken on account of your facilities of reinsurance with the Hibernia Company?

(Objected to, as there is no such allegation in the bill and no such construction can be drawn from it.)

A. No, sir; their acceptance of lines nor anything else which pertained to the insurance business of the Insurance Company of North America varied one iota on account of the acceptance of the reinsurance policies of the Hibernia Insurance Company. The business has been conducted in the same manner since the time of reinsurance contracts made with the Hibernia Insurance Company as before.

Q. The complainants state in their bill, "In pursuance thereof," meaning the previous intimations of their bill, the defendants applied through Charles Platt, Jr., of Philadelphia, on October 11th, 1880, "to reinsure the defendants on the excess of their usual lines," "which sum was $50,000." Please state whether to your knowledge the defendants ever made such an application or whether you ever made an application for a policy of reinsurance on the excess of any such sum as $50,000 on the 11th of October, 1880.

379 A. The application which is probably referred to in the answer to the complainants is the usual application which is at the time of opening reinsurance contracts with other companies made out, covering, for instance, from the East Indies on merchandise per vessel or vessels, steamer or steamers, from port or ports in the East Indies to port or ports in the United States. That is the application which, I think, is referred to; but I would state that the defendants never applied to the Hibernia Insurance Company for reinsurance on any excess under open policies unless by submitting such business, as they wished to reinsure their excess of $50,000 onto complainants, in which case it always lay with the complainants to accept or decline such open policies of reinsurance.

Q. That was not my question. I wish to know whether, as alleged by the complainants in their bill, the defendants did make application through Charles Platt, Jr., on October 11th, 1880, for a reinsurance policy to reinsure the excess of their usual lines, which said lines they stated to be $50,000, or, in other words, if any such policy of reinsurance through Charles Platt, Jr., was issued to these defendants on October 11th, 1880.

A. I can ascertain that fact, sir, and report later.

Q. You have already stated that you have no usual line of $50,000, and therefore I will ask no further questions upon that. Do you confirm that?

A. I confirm that we have no usual line of $50,000.

Q. So far as you have explained here above?

A. So far as I have stated above.

380 Q. The complainants state in their bill that the defendants contracted never to reinsure under what they (complainants) state to be defendants' usual line of $50,000, and this under the aforesaid policy of October 11th, 1880; did the defendants ever so contract, to your knowledge?

A. They never so contracted, sir. The right has been reserved by every insurance company always, so far as I know, to reduce

their lines by as much reinsurance as they can, or may wish to make.

Q. Please tell me about the policy that is now in the hands of Charles Platt, Jr., and which was issued to him.

A. If you are speaking of a policy in the name of Charles Platt, Jr., I would say that the Insurance Company of North America never made any application whatever that such a policy should be issued by the Hibernia; but if you are speaking about other open policies of reinsurance, they were made. The Insurance Company of North America never by any means asked the Hibernia Insurance Company to issue to Charles Platt, Jr., any policy whatever. Any policy that may be issued to Charles Platt, Jr., is outside of knowledge of this company, and the fact has always been that the Hibernia Insurance Company by their acceptance of risks through Charles Platt, Jr., have been considered by this company to be bound on such risks and have been bound, unless in cases where they at once specified their dissent to risks taken, in which cases, as I before stated, the Insurance Company of North America would have taken pleasure in following out their wishes at all times about all risks, un-
381 less, of course, disaster had been reported to the Insuranee Company of North America prior to the receipt of such reinsurance.

Q. For whose interest and at whose risk was that policy issued to Charles Platt, Jr., of October 11th, 1880, obtained? State whether this company has or has not any interest or has requested it.

A. It was to the interest of the complainants to have issued such a policy, but this company was without knowledge as to such policy or what it was meant to convey, except they took for granted that it gave Charles Platt, Jr., authority to bind special reinsurance given by d'f'ts to complainants to the extent therein mentioned.

Q. Did this company, either directly, through its own officers, or indirectly, through Charles Platt, Jr., as alleged by complainants, request the issuing by the Hibernia Company of this policy of 11th October, 1880?

A. No, sir.

Q. You have seen, have you not, that policy of 11th October, 1880, issued to Charles Platt, Jr.?

A. I have, if by the policy dated October 11th, 1880, you mean the policy which is numbered 268.

Adjourned to 10 a. m. Thursday, March 12th, 1885.

382 *Testimony of Wm. Platt, Recalled, Offered by Complainants.*

THE HIBERNIA INSURANCE COMPANY
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA.

THURSDAY, *March 12th*, 1885—10 a. m.

Present: The master (Hon. A. G. Brice), Messrs. Sansum and Sabourin, of counsel.

Mr. WM. PLATT recalled:

The WITNESS: On page 108 of the testimony, second line from the the top, the word "amount" should be "account."

I wish to state here that it would appear that the "particulars" of reinsurance and insurance in the case of the "Adam M. Simpson" (referring to page 103 of the testimony, third line from the bottom) were made after receipt of notice of the disaster. I would say in regard to that that the invoices of our assured had not come to hand prior to that date, and that even on the 10th of March we had learned from our Boston agency that the invoices had not even then been received, and that the particulars of insurance have been given on figures taken from papers other than the regular invoices, which are always awaited to prove the amount of insurance.

On page 113, sixth line from the top, strike out the word "the" before "Rufus Cushman." On the same page, ninth line from the bottom, where the answer reads "of course their interest was taken off that, amounting to $1,154.14," it should read "of course the interest," and so forth.

383 On page 124, the last line on that page, after the words "from Java," I wish to insert the words "to Boston."

On page 126, eleventh line from the bottom, where it reads "and $127,500 on the excess of seventy thousand," I wish to correct the answer so as to make it read "that was the total amount of special reinsurance placed on that vessel, and that some of it was flat reinsurance."

On page 129, sixth line from the bottom, I wish to state that the amount of $56,000 in my answer should be $66,000.

CHARLES PLATT, Jr., having been duly sworn, was examined as follows:

By Mr. SANSUM:

Q. You are the son of the president of the Insurance Company of North America?

A. Yes, sir.

Q. I direct your attention to the policy No. 268 and beg you to state, if you can call to mind, the negotiations which led to its being issued.

A. As near as I can remember, the facts are these: Marshall J.

Smith, of Marshall J. Smith & Co., was here in the city and he asked me if I could make such arrangement to get business for the Hibernia Insurance Company. I told him I didn't know, but I would see if the Insurance Company of North America were willing to re-
384 insure with the company and let him know. He said that in the meantime — would go back to New Orleans and write to me on the subject. He did go back and wrote me that the Hibernia would like to make an arrangement.

Q. Have you what he wrote you?

A. I think I have. I don't know where it is. I can look it up.

Mr. Sabourin, the solicitor for defendants, objects to any evidence of any kind whatsoever concerning policy No. 268, issued by the Hibernia Insurance Company of New Orleans through Charles Platt, Jr., and to the introduction of any evidence as to any agreements, understandings, written communications, and all other matters whatsoever relating to said policy 268, between Marshall J. Smith & Co. and Charles Platt, Jr., as being *res inter alios acta*, except in so far as said Charles Platt, Jr., and Marshall J. Smith & Co. be shown to have acted for the defendants and to the interest and with the consent of the latter.

By Mr. SANSUM:

Q. Did you receive from Marshall J. Smith & Co. a letter dated October 6th, 1880?

A. I did.

Q. Have you retained it in your possession?

A. I have.

(Witness produces said letter.)

Q. Please compare the letter which you have with what purports to be a copy of the same, and which the master is asked to initial, and see whether it is correct.

A. I have done so. It is correct.

(Letter marked by the master for identification.)

385 Q. Do you recollect responding to that letter (handing letter to witness)?

A. I see here a letter which seems to be a reply. I haven't read it yet. I will do so. (After reading:) I should say that was a reply to it.

(Letter signed Charles Platt, Jr., dated October 11th, 1880, addressed to Marshall J. Smith, Esq., New Orleans, requested to be initialed by the master for identification and so marked.)

Mr. SABOURIN: I desire to see said letter.

Mr. SANSUM: I object to your seeing it at present. I offer in evidence letter of October 6th, 1880, written by Marshall J. Smith & Co. to Charles Platt, Jr., copy of which has been heretofore referred to. I also offer the response of Charles Platt, Jr., to the same, dated October 11th, 1880. (Said letters handed to Mr. Sabourin.)

Letters admitted subject to the foregoing objection of Mr. Sabourin, marked A 1 and A 2.

Mr. SANSUM (to the witness): I now draw your attention to several letters; the first dated August 26th, 1882; second dated March 7th, 1883; the third dated June 18th, 1883; the fourth dated October 6th, 1883; the fifth dated November 20th, 1883; the sixth dated November 23d, 1883; the seventh dated December 6th, 1883, and beg you to state whether they are your letters, written by you to Marshall J. Smith & Co.

A. They are.

(Letters admitted under general objection of Mr. Sabourin, marked by the master A 3, A 4, A 5, A 6, A 7, A 8, A 9.)

386 Q. I have here four letters, the first dated January 5th, 1884; second dated January 23d, 1884; the third January 26th, 1881, and the fourth April 25th, 1884, all of them addressed to Marshall J. Smith & Co., of New Orleans; state whether they were written by you.

A. They were.

Letters admitted under general objection of Mr. Sabourin, and marked A 10, A 11, A 12, and A 13.

Q. I now direct your attention to a letter dated September 8th, 1882, addressed to Marshall J. Smith & Co., of New Orleans, signed by you, I believe, and request you to state whether you wrote that letter or whether it was written under your direction.

A. That was signed by me and written at my dictation, I suppose. I don't know now.

Said letter offered in evidence by Mr. Sansum and received under the general objection of Mr. Sabourin, marked by the master A 14.

Q. I beg you to refer, if you can, to your papers and state whether you can find a letter of June 9th, 1883, written by Marshall J. Smith & Co. to you.

A. I have such a letter.

Q. Be kind enough to compare the copy which I now hand you with the original and state whether you find it to — a correct copy.

A. It is a correct copy.

Q. Please refer to your originals of August 28th, 1882, and state whether you find the copy which I now hand you to be a correct copy.

387 A. It is a correct copy so far as it goes, and so far as it relates to this business it is a correct copy.

Q. I now hand you two papers purporting to be copies of letters written by Marshall J. Smith & Co. to yourself, one of which is dated September 4th, 1882, and the other September 15th, and beg you to compare them with the originals, if you have the originals, and state whether they are correct copies.

NOTE.—Letter of August 28th, 1882, is marked "A 14," and of June 9th, 1883, A 15.

Letters of September 4th and September 15th, offered in evidence by Mr. Sansum, admitted under general objection of Mr. Sabourin, and marked A 16 and A 17.

NOTE.—The letter dated September 8th, 1882, is re-marked A 13, Bis.

Mr. SANSUM:

Q. I now beg your attention to your letters received from Marshall J. Smith & Co. again, and specially to one dated June 9th, 1883, and ask you to compare the copy which I now hand you with the original, and state whether it is correct.

A. It is correct.

(Offered in evidence under general objection as above and marked by the master A 18.)

—. I now call your attention to three letters, one dated September 14th, 1882, another dated June 20th, 1883, and another dated September 7th, 1883, and beg you to say whether you were the writer of those letters addressed to Marshall J. Smith & Co.

388 A. Those are my letters.

Letters offered in evidence by Mr. Sansum under the general objection, and marked A 19, A 20, and A 21.

Q. On your receipt of Marshall J. Smith & Co.'s letter of October 6th, 1880, did you make known its contents to the Insurance Company of North America?

A. I imagine I did.

Q. The letter that you wrote of October 11th, 1880, in which you say "the Insurance Company of North America, through me, will be glad to enter into the reinsurance arrangement with the Hibernia on the terms named," was that statement made by you predicated upon anything that had passed between yourself and the Insurance Company of North America?

A. I certainly wouldn't say it on my own authority.

Cross-examination by Mr. SABOURIN:

Q. State, as you had begun to do at the origin of this evidence, what were the circumstances under which policy No. 268 was issued to you.

A. The facts were about as follows: Marshall J. Smith was here in the city and at my office, and asked me if I would like to have such an arrangement made by which I could get a commission on the business and at the same time give the Hibernia Insurance Company an amount of business.

Q. This was with whom?

A. Mr. Marshall J. Smith.

389 Q. Business for what company do you refer to?

A. It first started business in general.

Q. Speak so far as it relates to the North American simply; confine yourself to that.

A. The arrangement as proposed by him was that I should arrange with the Insurance Company of North America to accept through me reinsurances in the Hibernia under an open policy issued to me in my name. He said he would go back to New Orleans—that is, Mr. Smith said that—and confer with the Hibernia and write me on the subject. Mr. Smith did go back, and the result was this letter of October 6th, 1880, giving me instructions that the Hibernia Insurance Company would make such an arrangement by which they would issue to me a policy, which was afterwards sent, No. 268, and confine their lines to $10,000 reinsurance of the Insurance Company of North America. I wasn't allowed to take any direct business under that policy. My transaction under the policy was simply confined to reinsurances in the Insurance Company of North America.

Q. For whose benefit or interest was policy 268 issued?

(Objected to; the policy shows.)

A. I presume for the benefit of the Hibernia Insurance Company.

The MASTER:

Q. If you know state it.

A. Well, sir, I will say that it is for my own benefit.

Mr. SABOURIN:

Q. Had the Insurance Company of North America any-
390 thing to do with that policy or the benefit accruing therefrom?

A. Not to my knowledge.

Q. Did the Insurance Company of North America merely give reinsurance risks to the Hibernia under that policy 268, so as to help you and help Smith & Co., or did it instruct you to take it for its own benefit?

A. It never gave me any such instructions—I mean as to their own benefit. The company, as I say, I believe, gave me the business for my own benefit and that of the Hibernia Insurance Company.

Q. But they had no interest whatsoever in it?

A. No; nothing whatever in that policy. Well, sir, I will qualify that by saying, as I said before, that — the arrangement originally entered into I was limited to taking under that policy reinsurance of the Insurance Company of North America; further than that they had no benefit from it.

Q. When you say that you presume you showed that letter of October 6th, 1880, on its reception, to the Insurance Company of North America was it merely to ascertain whether they would give you such risks now that you had the permission from the Hibernia Company?

(Objected to.)

A. Yes, sir.

Q. In what was the Insurance Company of North America concerned, in so far as the negotiations between Mr. Smith and yourself and the Hibernia Insurance Company were carried on, tending to the issuing of policy No. 268?

391 A. It was done in that way simply as a matter of convenience.

Q. Convenience to whom?

A. To the Insurance Company of North America.

Q. What was convenient to it?

A. Instead of sending it through Marshall J. Smith or the Hibernia Company sending to me, as I was on the spot here and convenient.

Q. Whose policy is No. 268; is it the Insurance Company of North America's policy, or is it your policy as an insurance broker?

(Objected to as a question of law.)

A. It was my policy.

Q. In what capacity did you act on policy No. 268?

(Objected to as incompetent.)

A. As the policy states, as the agent of the Hibernia Insurance Company.

(Objected to, as there is no such statement upon the face of the policy that the witness was the agent of the Hibernia Insurance Company, and moved to be stricken out.)

The WITNESS: I would like to change that answer, if I may be allowed. I should change it to "As the policy implies" instead of "As the policy states."

Q. In all your correspondence and previous negotiations with Marshall J. Smith & Co. was it not tending towards the issuing of policy No. 268, and subsequently, in the carrying of said policy into effect, didn't Marshall J. Smith & Co., as representing the Hibernia Insurance Company, treat with you directly?

392 A. Yes, sir.

Q. For yourself?

A. Yes, sir.

Q. For your own benefit?

A. Yes, sir.

Q. Is it true, as charged by complainants in their bill, that policy No. 268, though issued to you and in your name, was in reality issued to and for the benefit of the Insurance Company of North America?

(Objected to on the ground that it is not competent.)

A. No, sir.

Q. Had the defendants an interest of any nature or to any extent whatsoever in policy No. 268?

(Objected to as incompetent.)

A. Only so far as I made them interested in it by accepting their reinsurance; in other words, I mean to say, as I said before, my arrangement under this policy was confined to reinsurance of Insur-

ance Company of North America. They had no further interest than that.

Q. You always acted as broker and agent of the Hibernia?

Objected to. The court will determine, as a matter of law, if he was acting as broker of the Insurance Company of North America.

A. Yes, sir.

Q. Had the defendants anything to do with the paper writing annexed to policy 268, dated July 1st, 1883, reducing your power of reinsurance from $10,000 to 5,000?

393 A. They had nothing to do with it.

Q. Do you or not carry on a business separate and distinct from that of the defendants and in a separate office?

A. Yes, sir.

Q. What is that business and where is your office?

A. My business is that of general insurance agent, and my office is located at present at 401 Walnut street, Philadelphia.

Q. Has the Insurance Company of North America any interest whatsoever in the premiums you receive for its reinsurances or on any other part of your business?

A. No, sir; none whatever.

Q. I believe that the last question put to you by complainants' counsel in your examination-in-chief was to this effect: Whether you were authorized to write to Marshall J. Smith a letter, dated Philadelphia, October 11th, 1880, in which you stated that the Insurance Company of North America would be glad to enter into reinsurance arrangements with the Hibernia on terms named, and in which you state in your answer, "I certainly would not say it on my own authority." What do you mean by stating that you would not say it on your own authority? Please explain that.

A. I mean that the consent of the Insurance Company of North America was obtained by me to the giving of reinsurance to the Hibernia Insurance Company under my policy, No. 268, and I so wrote to Marshall J. Smith & Company.

Q. And that is the meaning of the letter of October 11th, 1880?

A. That is the meaning of it; yes, sir.

394 Q. In other words, you mean that you obtained the consent of the Insurance Company of North America to give to the Hibernia Company, in New Orleans, its reinsurance business through you under policy No. 268?

A. Yes, sir.

Q. Was there anything agreed to or said or intimated or written or understood at any time between the Hibernia Insurance Company or its agents, specially Marshall J. Smith & Company, and those defendants or its agents, that the defendants should never carry a line of risk less than $50,000 or $60,000 or $70,000, as the case might be?

A. Not to my knowledge; no, sir.

Q. Did these defendants ever at any time undertake, for the sake of obtaining the reinsurance, either flat or under their open policies

with the Hibernia Insurance Company, to carry not less than $50,000 or $60,000 or $70,000 as their usual lines?

A. That is an affair of the Insurance Company of North America. I know nothing about it at all; I don't know what lines they carried.

Q. You personally don't know?

A. No, sir; except you say under their open policies. Of course I know on what excess those open policies were on. That is all I know about it.

Q. Do you not know that these defendants have frequently reinsured with you flat under policy 268 or on excesses for less than $50,000; for example, $40,000, $30,000, $25,000?

A. Yes, sir; I think I do. I do; yes, sir.

395 Q. Do you know a number of them?

A. I don't know any individual risk. I couldn't name them without reference to my files.

Q. Suppose I would indicate to you some, could you recognize them by the names?

A. I don't know that; I think it is very doubtful.

Q. Please refer to your files, if you have them here, and state a number, taking them hap-hazard.

A. I accepted $10,000 on their excess over $30,000 on merchandise on board the steamship "Peruvian," at and from Portland to Liverpool, dated April 8th, 1882.

Q. Did the complainants ever complain that the North America did not carry a line large enough—did they complain of that risk?

A. No, sir.

Q. Did you report it to them at the proper time?

(Objected to. Whatever report was sent by the witness to the Hibernia Insurance Company that is the evidence of the fact.)

A. Yes, sir.

Q. You did send a report to the Hibernia, did you?

A. The day that I received it from the Insurance Company of North America.

Q. The day that you received the application for reinsurance?

A. Yes, sir; the report sent at once to the Hibernia.

Q. Was the premium duly paid and accepted?

A. Yes, sir; until the latter part of the matter.

396 Q. I speak of this risk only.

A. Oh, yes, sir. I beg your pardon. I will not testify to that, because I see in the completion of this risk that it was reported no excess; so of course there was no premium paid in that particular case.

Q. Please refer now to a few others.

A. I have here one of $5,000 on Insurance Company of North America, excess of $25,000, on cargo on board the steamship "Avlona," at and from the Mediterranean ports to Montreal, dated Philadelphia, October 18th, 1881.

Q. Was there any complaint made as to that by the Hibernia?

A. Not to my recollection; no, sir.

Q. Was the premium paid?

A. Yes, sir; there was a large number of that kind, as you can observe by this mass of papers.

Q. There are a large number of such reinsurances on excesses on sums less than $50,000—in other words, $40,000, $45,000, $30,000, and $25,000—all through the different years in which you did the business for the Hibernia Company?

A. Yes, sir.

Q. Those were accepted by the Hibernia without any complaint made to you?

A. Yes, sir.

Q. Did the Hibernia Insurance Company ever complain of the character of risks taken by you or of the character of the vessels on which the insurances were made?

A. No, sir; not that I can remember.

Q. Did you not make reinsurances upon vessels having
397 made frequent trips before, or some trips before the loss occurred, on which the Hibernia was called to pay?

A. Yes, sir; there were some vessels of that description that we had several times.

Q. Wasn't each application for reinsurance with the Hibernia placed through you by the defendants under policy No. 268 a separate contract of reinsurance?

(Objected to as a question of law.)

A. Yes, sir.

Q. Were such applications for reinsurance made in writing, under the form used by the defendants? And, if so, produce the same so far as you can.

(Witness produces blank marked B 1.)

Q. Is that the general form for reinsurance applications?

A. Yes, sir; so far as I know. There are other forms for flat reinsurance. This is for excess reinsurance.

Q. What is your method of reporting reinsurances under policy No. 268 to the Hibernia, and please exhibit to us the forms that you used for that purpose.

A. The method was, as soon as the application was received from the Insurance Company of North America we transcribed it onto one of the blanks which I have in my hand, and it was then sent the same day to Marshall J. Smith & Company for the Hibernia Insurance Company—I presume, of course.

Q. By whom were these blanks of reports prepared?

A. The blanks were prepared by me—copied from a general way of doing by other companies—the customary way.

398 Above referred to blank marked B 2.

Q. Please look at the blank forms of applications for marine reinsurance of several insurance companies now exhibited to you, namely, the Phœnix Insurance Company, the Insurance Company of the State of Pennsylvania, and the British & Foreign Marine In-

surance Company, Limited, and state whether those forms of application are substantially the same as those of the Insurance Company of North America. Please state also whether they are the usual forms of applications in such cases.

A. They are the usual forms in use by those companies.

Q. Used in general by all other companies?

A. Yes, sir; so far as I know. I never saw any different from that.

Above papers marked respectively B 3, B 4, and B 5.

Q. How did you make reports to complainants on behalf — the defendants concerning the risks accruing under the several open policies, Nos. 277, 296, 297, and 306, issued by complainants to defendants?

A. As soon as the probable lines in the first place were received from the Insurance Company of North America they were at once sent on blanks that I have already shown to Marshall J. Smith & Company, and as fast as completed by the Insurance Company of North America the completion was sent on, or when the report came that there was no excess that was reported as soon as received by me.

Q. Why were the reports so made by the defendants through you?

399 A. As a matter of convenience mainly, and to give me my commission and Marshall J. Smith & Co. their commission.

Q. Were such reports always correct, and made as soon as possible?

A. As far as I know, yes, sir. There may have been some clerical errors. That will occur sometimes.

Q. Was there ever, to your knowledge, a concealment of facts material to the risks or a failure of disclosure of such facts on the part of the defendants?

A. No, sir.

Q. Were all the premiums of reinsurance due to complainants by the defendants correctly reported by the defendants on each and every risk and upon each vessel, and were all such premiums duly and wholly paid by the defendants to complainants?

(Objected to.)

A. They were either paid or tendered.

Q. The complainants state in their bill that they are informed and believe that the defendants have reported to them "a great many other reinsurance risks upon which complainants have paid to defendants divers claims and demands for special and general average losses, which were false and untrue, and which never were within the terms of complainants' contract of reinsurance with the defendants." State whether this charge of complainants' bill is true or not.

(Objected to as a question of law.)

A. I should say false.

400 Q. Complainants also allege in their bill that they are informed and believe that "a great many risks to which the

complainants' several policies of reinsurance attached, and to which the complainants were and are entitled to be paid by defendants' usual premiums, have never been reported to the complainants, and complainants have received no credits from the defendants for the premiums that have accrued thereon." Please state whether, to your knowledge, this charge in complainants' bill is true or not.

A. It is not true, to the best of my knowledge; no, sir.

Q. Was it not through you that the defendants made all their reports concerning all their risks upon the open policies they held from the Hibernia, and was not all the business which these defendants had of complainants under policy 268, as well as under their several open policies, transacted by the defendants with the complainants through you?

A. Yes, sir.

Q. You are, then, perfectly familiar with all the reinsurance transactions between the complainants and defendants?

A. As far as I was, as their agent, interested in them; yes, sir.

Q. And the reports of risks were full and complete, all proper and necessary and material information given and disclosure of facts made, and all premiums in each case and in all cases were duly paid by the defendants to the complainants through you?

(Objected to as not proper cross-examination.)

A. Yes, sir; they were all paid. All proper disclosure of facts was made, so far as I know.

401 Redirect examination by Mr. SANSUM:

Q. I wish to put these two papers in the case of the "Peruvian" in evidence. Have you any objection to their going in?

A. I don't care to break my files. I would rather not do it, but will furnish the same if it is returned to me.

(Marked B 6.)

Mr. SABOURIN:

Q. Has policy No. 268 always been in your possession and under your control?

A. Always until I gave it up to the court.

Mr. SANSUM:

Q. Did you never show policy No. 268 to the defendants at any time?

A. I don't remember that I did; no, sir; it is not within my recollection.

Q. Did your brother, William Platt, never see it?

A. I am unable to say. I don't remember it.

Q. Did your father, Mr. Charles Platt, never see it?

A. I can only give you the same answer to that—I don't know.

Mr. SABOURIN:

Q. I bring to the notice of the witness that the defendants, who file an answer through Charles Platt, president, admit having seen

and read policy No. 268, issued to Charles Platt, Jr. Therefore from whom could they have received that except from yourself?

402 A. Well, it may have been from me. I say I don't remember it.

Counsel for defendants now call on Mr. James Prevost, assistant secretary of the Hibernia Insurance Company, now present, and on counsel for complainants to produce all letters, statements, reports, extracts, copies of papers and documents, or paper writings of any kind whatsoever the said Provost may now have in his possession or under his control, in so far as they relate to the matters in dispute in this case, so that they may be examined by defendants and be by them admitted, denied, explained, or contradicted, as the case may be; also now to state what statements, reports, extracts, copies of papers and documents, or paper writings of any kind whatsoever the complainants may have, if any, at New Orleans relating to the matters now in dispute, and why they were not brought here that they may be submitted to the defendants for the purpose of being admitted, denied, explained, or contradicted, as the case may be.

Also to state what information, from any source whatever, he may have as to the correctness or incorrectness of the statement made by the defendants concerning all and each the several vessels inquired into by complainants, and particularly the "Adele," the "Budstikken," the "Zealand," the "Matchless," and the "Orannore," specially indicated by complainants as having been incorrectly stated by defendants, and to point out in what such alleged errors of statement consist, so as to give to defendants an opportunity for correction or explanation should any such be found necessary by them.

403 Also to specify distinctly what reports of reinsured risks were kept back which should have been reported to complainants, what losses were reported to complainants and paid by them which were fraudulent and in error, and the exact amount thereof, and what risks attached on which complainants allege they are entitled to be paid usual premiums by defendants and to receive credit therefor.

Mr. SANSUM: I have not closed my case here. I do not propose to close it here. I do not propose to give any information on the subjects named, except such as comes through sworn witnesses. There is no law requiring me to do so, and I refuse.

Mr. Prevost having been requested to make answer to the first request made by counsel for defendants, states that he has in his possession no books and papers or documents here, nor did he bring any with him.

The master states that he cannot press the second request of counsel for defendants.

The MASTER (ruling upon defendants' third request): Mr. Prevost has been tendered to the defendants, and I know of no other way to compel him to answer than to have him put upon the stand and made a witness under oath.

The master, ruling upon the fourth request of defendants' counsel, states that he has no authority to make the order desired, but that it is a matter which belongs to the circuit court.

404 WILLIAM A. PLATT, being recalled, is asked by the complainants' counsel to state how much insurance was made by the defendants on the steamship "Herman," from New York to Antwerp, about September 28th, 1882.

A. $66,500.

Q. How much was made on the steamship "Woesland," on the same kind of a voyage, New York to Antwerp, May 23d, 1882?

A. $57,876.

Q. How about the steamship "Atlas," Boston to Liverpool, April 14th, 1882?

A. $36,000.

Q. Steamship "Switzerland," New York to Antwerp, April 10th, 1882?

A. $69,646.

Q. Steamship "Peruvian," Portland to Liverpool, April 8th, 1882?

A. $20,000.

Q. Steamship "Erin," New York to Liverpool, September 6th, 1882?

A. $39,600.

Q. Steamship "Bessel," September 12th, 1882?

A. That was from New York to Liverpool—$52,900.

Q. Steamship "Rhyland," October 14th, 1882?

A. $59,719, New York to Antwerp.

Q. Steamship "Hector," October 18th, 1882?

A. Norfolk to Liverpool—$43,800.

405 Q. Steamship "Ravensheugh," October 19th, 1882; what voyage was that?

A. Savannah to Barcelona; nothing.

Q. Steamship "Britannic?"

A. New York to Liverpool, October 9th, 1882; $87,434 on merchandise other than cotton.

Q. Steamship "Katy," on voyage September 18th, 1882; where was the voyage from and to?

A. New York to Stettin; $69,150.

Q. Steamship "Caleb S. Ridgway," from Para to New York, February 14th, 1882?

A. $207,604.

Q. Was there such a vessel as "Belcarres?"

A. I find no such vessel.

Q. Is there any name like that that you remember?

A. I remember a steamer called "Bell Cairn." I haven't looked that up. Ship "Dorris," $33,633. Ship "Robert Porter," on voyage March 23d, 1882, $25,138. The "Ontario," February voyage, $42,425. Same steamship, April 3d, 1882, $34,500.

Q. Please look at the barque "Mary Louise," February 4th, 1882.

A. $36,058. Ship "Andromeda," $37,028, April 8th, 1882. "Scot-

tish Prince," Manila to Boston, June 29th, 1882, $45,312. I found, from Manila to the United States, a barque called the "Grandee," which, I think, is what you mean by the "Rio Grande," May 5th, 1882, $46,000.

406 Q. I would like you to state, if you recollect, when the Hibernia Insurance Company made its first objection to the payment of any claim that you sent in against it.

A. I can't remember.

Q. Can you find out?

A. That would be done entirely through Marshall J. Smith & Company or through Charles Platt, Jr. I do not think that we would have the Hibernia Insurance Company's objections in the office or any papers relating to that Co.'s objections.

Q. Did you send all the claims through Charles Platt, Jr.?

A. All the claims on reinsurance made through him were sent through him.

Q. Whether of policy 268 or any others?

A. Yes, sir; unless they were reinsured by our agents; and even then, for convenience sake, we would sometimes send them through Charles Platt, Jr. So long as they got to the Hibernia we did not care how they got there.

Cross-examination of WILLIAM PLATT continued:

Mr. SABOURIN:

Q. Will you now please answer the question heretofore propounded to you by me concerning the total amount of premiums paid, from October, 1880, to the end of your transactions with them, to the Hibernia Insurance Company for reinsurance risks?

A. $84,925.20.

Q. Do you gather that from the examination of the books of this company?

407 A. Yes, sir.

Q. Have you ever seen policy No. 268, issued by the Hibernia Company to Charles Platt, Jr.?

A. Yes, sir.

Q. Have you ever applied to the Hibernia Company for reinsurance under that policy?

A. No, sir.

Q. To whom did you apply when you applied to Charles Platt, Jr.?

A. We applied to him for reinsurance in the Hibernia Insurance Company, but did not know what policy he put it under, unless it was reinsurance under open policies, which specifically state the voyages which were covered.

Q. Did not the open policies attach by themselves when there were excesses in your lines of $50,000, $60,000, or $70,000, as stated in said policies?

Objected to as a question of law.

A. Yes, sir.

Q. For any amount not covered by your open policies with the Hibernia was there ever any other policy except policy 268 under which you could apply for reinsurance?

A. No, sir.

Q. Therefore you did not apply under that policy specifically for reinsurance under $50,000?

A. Therefore we did apply.

Q. Has this company any interest in any manner whatsoever in policy 268?

408 (Objected to as a question of law.)

A. No, sir.

Q. As charged by complainants in their bill, was the policy 268 really issued by the Hibernia Company to the Insurance Company of North America, using merely the name of Charles Platt, Jr., in place of its own?

(Objected to as a question of law.)

A. To the best of my knowledge, no, sir.

Q. Were these defendants interested in any manner in the premiums accruing under policy 268?

Mr. SANSUM: I admit that they were not. The Hibernia Insurance Company were the only persons interested in that.

The WITNESS: The defendants were not.

Mr. SABORIN:

Q. Had the defendants any interest in the commission or brokerage of those reinsurances made with the Hibernia?

A. No, sir; none whatever.

Q. Was Mr. Charles Platt, Jr., in whose name and to whom policy 268 was issued, your representative or agent in that matter?

(Objected to as a question of law.)

A. To the best of my knowledge, no sir.

Q. Was there anything agreed to, or said, or intimated, or understood at any time between the Hibernia or its agents, and especially Marshall J. Smith & Co., and these defendants or its agents, to the latter's knowledge, with or with- their consent, that would indicate or from which it could be reasonably inferred that Charles Platt, Jr., in that policy represented or acted for these defendants?

409 (Objected to as a question of law.)

A. To the best of my knowledge and belief, no, sir.

Q. Was there anything agreed to, or said, or intimated, or understood at any time between the Hibernia or its agents and the defendants or its agents that defendants should never carry a line less than $50,000, or $60,000, or $70,000, as the case might be, either under any of the open policies or under policy No. 268?

(Objected to as a question of law.)

A. Positively not.

Q. Could the complainants reasonably so infer from any act, custom, saying, or agreement of these defendants?

(Objected to as a question of law.)

A. No, sir.

Q. Was Charles Platt, Jr., acting as agent or representative of the defendants when you made applications through him for special reinsurances in the Hibernia? Who did he represent?

(Objected to as a question of law.)

A. To the best of my knowledge and belief he represented the Hibernia Insurance Company. He was not acting as the agent of the defendants in any way whatever.

410 Q. Is Charles Platt, Jr., connected in any manner with the marine insurance business carried on by the defendants?

A. He is not, in any way whatever.

Q. Under what policy did you effect your special reinsurance with the Hibernia Company and through whom?

A. We effected special reinsurance in the Hibernia through Charles Platt, Jr., and under policy No. 268.

Q. Through whom were your premiums for such special reinsurance paid?

A. Through Charles Platt, Jr.

Q. Through whom did you make reports of risks to the Hibernia under that open policy of reinsurance with defendants?

A. Through Charles Platt, Jr.

Q. Why did you make reports through him and not directly to the Hibernia?

A. Because he had been selected by the Hibernia Insurance Company, in my opinion, as their agent or representative in Philadelphia.

(Objected to as not competent testimony.)

411 Q. Please examine the form marked B 1 of your application for special reinsurance on cases (excess?) with the Hibernia through Charles Platt, Jr. Is that the form—the usual one habitually made use of by you in such matters?

A. Yes, sir.

Q. Was there any other form for application for reinsurance, flat?

A. There was.

Q. Have you such a form here?

A. It is the same as was placed on the record yesterday, marked A.

Q. Has this company always claimed and exercised without contest, as properly belonging to any insurance company, the right of reducing the line of their risk to such figures as they might at any time deem proper?

(Objected as not competent; it is a question of law.)

A. Yes, sir; it has always been the custom of this company, as well as other companies, to the best of my knowledge and belief.

Q. Look at policy 268 and state whether these defendants have

anything to do with the agreement entered into between complainants and Charles Platt, Jr., of date July 1st, 1883, modifying the extent to which the said Charles Platt, Jr., was allowed to reinsure thereunder.

(Objected to on the ground that it is incompetent, irrelevant, and immaterial.)

A. This company has nothing whatever to do with it.

412 Q. Did these defendants ever fail to report to the Hibernia, either directly or through Charles Platt, Jr., their agent and representative, all and any facts material to the risks being reinsured or fail to disclose the same?

(Objected to on the ground that it is a question for the court to determine and not for the witness to answer.)

A. No, sir; they did not.

Q. Have you in all of such matters, concerning the information you were required to give or should have given to the Hibernia Insurance Company, acted in perfect good faith?

A. Always in entire good faith.

Q. Have you always reported either to the Hibernia Company, directly or through Charles Platt, Jr., all the facts material to the risks that you were asking reinsurance under?

(Objected to as a question of law.)

Q. If any facts material to the risks had come to the knowledge of the Insurance Company of North America they never reinsured without stating those facts to the reinsuring companies.

(Objected to.)

Q. Including the Hibernia Insurance Company?

A. Including the Hibernia Insurance Company.

(Objected to.)

Q. Whether under policy 268 or under open policies?

A. Whether under policy 268 or any other policy.

(Objected to.)

Q. Or under open policies of this company?

413 A. Yes, sir.

Q. Have you ever strictly complied with the terms and meaning of all your open policies as well as with the terms and meaning of policy No. 268?

(Objected to as a question of law.)

A. Yes, sir.

Q. In good faith?

A. In good faith.

Q. Have these defendants given to complainants all the knowledge and information as to the risks under policy of reinsurance and as to all losses and misfortunes thereunder which were in their

possession and which it is usual and proper or necessary to convey to the reinsurer?

(Objected to as a question of law.)

A. Yes, sir.

Q. Were any objections made at the time of such information given to the complainants by the latter to these defendants?

A. If made, they were always acceded to in cases where it was possible to do so.

Q. Complainants charge in their bill that many reports of risks sent by defendants to them were false and untrue and were outside of all or any of the terms of the policy of reinsurance with you. Please state whether that is true or not.

(Objected to as a question of law.)

A. To the best of my knowledge and belief, it is untrue.

Q. Complainants allege in their bill that many demands for losses were made by these defendants upon them which were
414 paid by them which were predicated upon false and untrue statements. Please state whether this allegation of the bill is correct or not, to your knowledge.

(Objected to as a question of law.)

A. They were not, to the best of my knowledge and belief.

Q. Complainants allege in their bill that payments to a large amount made by them to defendants for loss were made in error and were induced by false and untrue statements, and that therefore complainants are entitled to recover the same. State whether that allegation of the bill is correct or not.

(Objected to as a question of law.)

A. I know of no untrue statements ever having been made to the complainants by the defendants.

Q. The defendants aver in their answer that all reports of risks, statement of amount insured and of losses incurred and adjustments made were — each and every instance fair, true, and correct. Is that statement borne out by the facts, to your knowledge?

(Objected to as a question of law.)

A. They were made, to the best of the defendants' ability, and were fair, true, and correct in all cases, to the best of my knowledge and belief.

Q. Should there be any misstatements or errors or misrepresentations would not they come to your notice as the head of the marine business of this company?

415 A. In a very large business, of course it is impossible that the clerks should at all times have everything absolutely correct, but, to the best of our ability, we have always endeavored to have all matters of detail correctly executed.

Q. Have any misrepresentations as to the character of the risks offered for reinsurance ever been made by these defendants?

(Objected to as a question of law.)

A. Never.

Q. Have these defendants ever concealed from the Hibernia Company any facts material to the risk, within your knowledge?

(Objected to as a question of law.)

A. Never.

Q. Have these defendants ever failed to disclose to the Hibernia Insurance Company all the facts material to the risks under the applications for reinsurance made by these defendants?

(Objected to as a question of law.)

A. If regarded as material they were always disclosed.

Q. Complainants allege in their bill that they are informed and believe that defendants have reported to them "a great many other reinsurance risks upon which complainants have paid the defendants divers claims on demands for special and general average losses which were false and untrue and which were never within the terms of complainants' contract of reinsurance with defendants." State whether this charge in complainants' bill is true or not.

416 (Objected to as a question of law.)

A. It is not, to the best of my knowledge and belief.

Q. Complainants also allege in their bill that they are informed and believe that "a great many risks to which complainants' full policies of reinsurance attached and which complainants were and are entitled to be paid by defendants' usual premiums have never been reported to complainants, and complainants have received no credits from defendants for the premiums that have accrued thereon." Please etate whether, to your knowledge, this charge in complainants' bill is true or not.

(Objected to as above.)

A. As far as I know, no report has ever been omitted under reinsurance contract with the complainants.

Q. That could entitle complainants to a credit for premiums?

(Objected to as above.)

A. That could entitle complainants to a credit for premiums.

Q. Were any reports of any kind whatsoever on which premiums could attach in favor of the Hibernia Company neglected to be made to Charles Platt, Jr., representing the said Hibernia Company?

(Objected to as above.)

A. So far as I know, none were ever so neglected.

Q. Did you ever hold back any such report of reinsurance in which the Hibernia could have had an interest or claim for its legitimate and proper premiums under either the opon policies or under policy No. 268?

417 (Objected to as above.)

A. No, sir; we did not.

Q. You seemed yesterday not to have understood that in my questions I was referring to policy No. 268, issued to Charles Platt, Jr.; therefore I will now repeat the question which was then put. It is as follows: Complainants state in their bill, "In pursuance thereof," meaning the previous intimations of their bill, that the defendants applied through Charles Platt, Jr., of Philadelphia, on October 11th, 1880, "to reissue the defendants on the excess of their usual line," which sum was $50,000. Please state whether, to your knowledge, the defendants ever made such an application or whether you ever made an application for reinsurance for any such sum as $50,000 on the 11th of October, 1880.

(Objected to because the bill does not so state, and if it did it is not a proper question to put to the witness. It is a question of law.)

A. We never did so apply.

Q. I wish to know whether any policy of reinsurance through Charles Platt, Jr., was issued to these defendants on date of October 13th, 1880.

A. No, sir.

Q. The defendants in the answer to the bill of complainants make claim for $209.65 as a balance due them on a settlement of account up to 15th November, 1884, the date of the filing of their answer. Please state whether at that time this claim of defendants against complainants was correct and due to defendants, and whether
418 the same is now due or has been reduced through any cause whatsoever.

A. The balance owing to the defendants by complainants November 11, '84, was correctly stated in the answer of defendants $209.65, according to the account thereof, which is now before me.

Said account offered in evidence by defendants' counsel and marked B 7.

The WITNESS: Their account has been credited since that time with salvage in the case of the "Arthur C. Wade" to the amount of $223.95 at one time and $223.96 at another time.

Q. Do you mean to say since November 11th, 1884?

A. Yes, sir.

Q. Therefore that claim of $209.00 has been wiped out?

A. Yes, sir.

Q. Please go on with the new claims that this company has against the complainants; state them in full, with their amount, and state what at this day is claimed by you on settlement of account against the complainants.

A. In addition to the balance owed by the Hibernia Insurance Company to this company November 11th, 1884, as per account placed on record, there have been claims presented to them as follows: For particular average, Lord Wolseley, $25.94; for particular average, Thomas Lord, $66.52; for general and particular average, Sportsman, $212.66; to proportion of expenses, Sportsman, $16.38; general average, Deep Dale, $3.09c.; general average, Panama, $64.71; general average, Silla, $120.83. Their account to-day stands

as follows: To sundry claims added to the balance of account as per account of November 11th, 1884, $719.78. The account is
419 credited with $223.95 and $223.96, making the balance of account due March 12th, 1885, from complainants to defendants $271.87. In addition to this there are claims outstanding against the complainants, bills for which have never been sent to them, the cases not having up to the present time been settled. The cases as far as they are recorded in this office, but which may be added to hereafter, are as follows: Steamer "Dupuy de Lorne," steamer "Panama," steamer "Salambria," steamer "Deep Dale," steamer "Bordeau," barque "L. E. Cann."

I would state that the defendants never reported to the complainants a reinsured risk in the case of the ship "Obi," as there was no open policy covering that vessel because of the amount falling under the limit stated in the open policy covering such risk.

I would say that they did not report a reinsured risk in the case of the brig "Budstikken," because there was no open policy reinsurance covering the defendants at that time to Montreal.

I would say that they never reported a reinsured risk in the case of the barque "Etimologia," because they had no open reinsurance policy covering on grain cargo.

I would say that they never reported a reinsured risk in the case of the barque "Yorkshire" for the same reason as stated for the brig "Budstikken."

I would say that they never reported a reinsured risk in the case of the bark "Adele," because they were covered by no open reinsurance policy to Montreal.

I would say that they never reported a reinsured risk per steamship "Avlona," because they were never covered by open reinsurance policies to Montreal.

420 I would say that they did report a reinsured risk in the case of the barque "Skerryvore," which is incorrectly stated in the answer which I have before me as the barque "Skerrymore," and that such reinsurance was reported under the West India open policy of the complainants reinsuring the defendants on such class of risks, and that the reinsurance was correctly reported in this case to the complainants.

I would say that the defendants never reported to complainants a reinsured risk in the case of the barque "Ocean," because they were never covered by open reinsurance policies on voyages such as that made by the barque "Ocean," from Trieste to New York.

I would say that they never reported to the complainants the reinsured risk per barque "Impi," because they never had open policy reinsurance covering grain cargoes.

I would say that they never reported a reinsured risk per steamer "Peruvian," because they had no open policies of reinsurance covering to or from Montreal.

Complainants object to all the foregoing statements made by the witness on the ground that the said statements are predicated, not upon facts, but upon conclusions to be drawn from other facts; that

the reasons covered by the word "because" in every instance as given by the witness are questions for the court to decide and not for the witness.

Account of to-day's date, defendants with complainants, offered in evidence and marked B 8.

Adjourned to 10 a. m., Friday, March 13th, 1885.

421 U. S. Circuit Court, Eastern Dist. of Louisiana, Fifth Circuit.

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE CO. OF NORTH AMERICA. } No. 10647.

Proceedings before Hon. A. G. Brice, master.

NEW ORLEANS, *April 15th*, 1885.

Present: Mr. O. B. Sansum, for complainants; Mr. E. Sabourin, for defendants.

JAMES PREVOST, sworn on behalf of complainants, was examined as follows:

Objections.—Mr. Sabourin, counsel for defendants, objects to all and singular the testimony to be given by this witness on the ground that the evidence to be given should have been given in Philadelphia whilst complainants were there taking their testimony, and where the books, papers, and all persons having full knowledge of the facts could testify, and where his evidence could be either admitted or denied or contradicted; and he further objects on the grounds stated in his objections made in Philadelphia, which objections are on pages — of the testimony taken in Philadelphia, and makes said objections a part of this objection.

Direct examination by Mr. SANSUM:

Q. How old are you?

422 A. I am just about thirty-four.

Q. What is your business now?

A. I am an insurance clerk.

Q. Where—in what company?

A. In the Hibernia Ins. Co.

Q. How long have you been in the business of insurance?

A. For about eleven years.

Q. Are you familiar with the customs and usages that prevail in that business?

A. Yes, sir; I am familiar.

Q. Were you in the employ of the Hibernia Ins. Co. on or about the 11th of October, 1880, the date of the letter of Charles Platt, Jr., to Marshal J. Smith & Co., which is dated 11th October, 1880 (marked A 2)?

A. Yes, sir; I was in their employ.

Q. You have seen the policy No. 268 (marked "X 1," 4, 15, '85)?

A. Yes, sir; I have seen it.

Q. It is the policy mentioned in the bill of complaint and which was issued to Charles Platt, Jr.?

A. Yes, sir; the same.

Q. Will you state whether that policy (marked "X 1," 4, 15, '85) was or was not made upon the statements made in that letter (marked "A 2")?

Objection.—Mr. Sabourin, counsel for def'ts, objects to all evidence that may be *addressed* on policy No. 268 (marked "X 1," 4, 15, '85) as *res inter alias acta* and irrelevant to the issue between complainants and defendants.

A. The policy No. 268 (marked Y 5, 4, 15, '85) was made
423 according to this letter (marked A 2), and it was made out by myself.

Q. My question was whether policy No. 268 was issued upon the statements made in that letter (marked A 2).

A. Yes, sir; it was made and issued on the statements of that letter.

Q. I now call your attention to a printed and written paper, dated Philadelphia, April 18th, 1881, signed by Wm. A. Platt (marked "A"), and direct your attention at the same time to policy of insurance made by defendants and No. 277 (marked Y 1, 4, 15, '85), and beg you to state whether that policy was made upon that application.

Objection.—Mr. Sabourin, counsel for def'ts, objects to the question on the ground that complainants have not proved the signature of Wm. A. Platt to said application; that complainants had Wm. A. Platt on the stand whilst taking testimony in Philadelphia, and, further, that he is the best witness of his own signature and should have then been examined relative thereto.

A. Yes, sir; this policy was made upon that application.

Q. I now call your attention to another paper, dated Nov. 9th, 1881, signed by Wm. A. Platt (marked "C"), and direct your attention at the same time to complainants' policy of insurance No. 296 (marked Y 2, 4, 15, '85), and ask you to state whether that policy was made and issued upon that application.

Objection.—Mr. Sabourin, counsel for def'ts, objects to the question on the same ground as stated in his last objection.

A. Yes, sir; it was issued on the same application.

Q. Now, I call your attention to another paper, dated Nov. 10, '81, signed by Wm. A. Platt (marked "B"), and also call your
424 attention to policy issued by complainants No. 297 (marked Y 3, 4, 15, '85), and beg you to state whether that policy No. 297 was issued upon that application.

Objection.—Mr. Sabourin, counsel for def'ts, makes same objection as before.

A. Yes, sir; it was issued on that application.

Q. I now call your attention to another paper, dated August (date

of month not given), 1882, signed by Wm. A. Platt (marked D), and also to the policy of insurance No. 306 (marked Y 4, 4, 15, '85), and beg you to state whether that policy was issued upon that application.

Objection.—Mr. Sabourin, counsel for def'ts, makes the same objection.

A. Yes, sir; it was issued on that application.

Q. I understood you to say you have been in the employ of the complainants for a number of years?

A. Yes, sir.

Q. Were you in their service or employ during the years 1880, 1881, 1882, 1883, and 1884?

A. Yes, sir; I was.

Q. I desire you to state what the fact is and what your duties were, particularly with respect to the business that defendants had with complainants during the time mentioned, from 1880 to 1884, inclusive.

A. I had the full charge of it.

Q. Had any other person in the employ of complainants anything to do with it?

425 A. No, sir; none but myself.

Q. Now, I wish you to state whether the notices of reinsurance of defendants upon the several policies of insurance mentioned came into your hands and for your inspection.

A. Yes, sir.

Q. Now, will you state what the fact is as to whether any of the notices which came into your hands at any time gave any information or any statement touching the amount or sum that defendants intended to carry as their line on any of the vessels mentioned?

A. No, sir; not a single application will show the amount they retained on any single vessel.

Objection.—Mr. Sabourin, counsel for def'ts, objects to any evidence being given on those notices or applications of reinsurance on the ground that the notices themselves, being produced and being in the hands of complainants, are the best evidence.

Q. Here is a notice (marked X 1, 4, 15, '85) dated June 11th, 1881. Will you state whether there is anything upon that notice to indicate to you that defendants intended to carry a risk or a line of less than $50,000?

A. The only thing on this application to show is simply on sugar, where it says an excess of $25,000 on sugar.

Q. It says an excess of $25,000 on sugar?

A. Yes, sir.

Q. Anything else?

A. No, sir.

Q. Now, what I want to know is whether from that notice (marked X 1) you could ascertain that the defendants intended to

426 carry a risk of less than $50,000.

A. There is nothing there to show.

Q. I now show you another notice (marked X 2, 4, 15, '85) and ask you whether that was the notice you received with respect to the reinsurance of the S. S. Alvona.

A. The only thing is on the cargo.

Q. An excess of over $25,000 on the cargo?

A. Yes, sir; $25,000 on the cargo.

Q. Now, I show you another notice (marked X 3, 4, 15, '85), dated April 11th, '82, for the reinsurance on the bark L. E. Cann, and beg you to state whether that notice is the one you received and whether there is anything on that notice to indicate that the defendants intended to carry less than $50,000.

A. That is the notice, and there is nothing on it to show what they retained; no indication at all.

Q. Now, I show you another notice, dated June 20th, '82 (marked X 4, 4, 15, '85), for the reinsurance of the bark "Yorkshire," and ask you to state whether there is anything upon that notice that indicates that the defendants would carry a line of less than $50,000.

A. There is nothing on it to show what they retained.

Q. I now show you a notice (marked X 5, 4, 15, '85) dated Aug. 20th and Sept. 20th, '82, for reinsurance on the bark Impi, and beg you to state whether there is anything upon it by which you could ascertain that defendants intended to carry a line of less than $50,000.

A. There is nothing to show.

427 Q. I now show you another notice (marked X 6, 4, 15, '85), dated Sept. 23d, 1882, and consisting of two papers for the reinsurance of the brig Budstikken, and state whether there is anything upon that notice from which you could ascertain that defendants would carry a line of less than $50,000.

A. Nothing there to show.

Q. Here is another notice (marked X 7, 4, 15, '85), dated Feb'y 1st, 1883, for the reinsurance of the bark "Adele," and I beg you to state whether there is anything upon that notice that would enable you to determine whether the defendants intended to carry a line of less than $50,000.

A. There is nothing on it to show.

Q. Now I show you another notice (marked X 8, 4, 15, '85), dated Jan'y 6th, '83, being for reinsurance on the bark Ocean, and beg you to state whether the notice states anything from which you could ascertain or infer that the defendants intended to carry a line of less than $50,000.

A. There is nothing on it to show.

Q. I now call your attention to another notice, dated Dec. 7th, 1883 (marked X 9), being for the reinsurance of the bark "Skerryvore," and I beg you to state whether there is anything upon that notice from which you could ascertain that the defendants intended to carry a risk of less than $50,000.

A. There is nothing there to show.

Q. I now call your attention to another notice, dated Oct. 23d, 1883 (marked X 10, 4, 15, '85), being for reinsurance of the Etimologia, and beg you to state whether there is anything upon that

notice to indicate that defendants intended to carry a line of
428 less than $50,000.

A. There is nothing there to show.

Q. The first paper I showed you (marked X 1, 4, 15, '85) and the second (marked X 2, 4, 15, '85) I again wish you to examine. (Witness handed papers.) The notice (marked X 1) is for reinsurance on the ship "Obi" and reads "upon sugar being in excess over $25,000." Now I want to know from that statement of $25,000 you could determine that defendants intended to carry only $25,000.

A. No, sir; this simply covers on sugar; they could have had more on the freight and more on the ship, and they could have had other things on her. She may have had also other cargo besides the sugar.

Q. Now I want to know whether when you first received any of these notices indicating just as this notice (X 1) does on sugar, or an excess of $25,000 or $30,000 or $40,000, did you do anything with respect to those notices?

A. Yes, sir; in the first place I went to see Marshal J. Smith & Company.

Q. These notices came through them.

A. Yes, sir.

Objection.—Mr. Sabourin objects to anything that may have been done between this witness as representing the complainants and Marshal J. Smith & Co., except it be shown first that Marshal J. Smith & Co. acted for defendants.

A. I went to Marshal J. Smith & Co. I showed them the application and called their attention to it, and they said there might be freight, specie, and other cargo on board the vessel besides the sugar.

429 Q. You called their attention to the fact?

A. Yes, sir.

Q. You called when they first commenced?

A. Yes, sir; when the first 2 & 3 applications were received here.

Q. Marshal J. Smith & Co. had the risks reported to them?

A. Yes, sir.

Q. I understand you did enquire of Mr. Smith?

A. Yes, sir.

Q. He was the agent?

A. Yes, sir; he is the agent.

Q. He stated what?

A. He stated "this application only shows, so far as it goes, that they might have other cargo on board of the vessel."

Q. What did you say to him?

A. I made the remark to him "that it would be the sense of the policy," and that if they, Ins. Co. North America, did not carry the full extent of $50,000 there was no policy, and he said "those men would not carry less than that."

Q. You will remember, when you were in Philadelphia, the testimony of Mr. Charles Platt, Jr., and also of Mr. Wm. A. Platt, 2nd vice-president of the Co., to the effect that risks had been reported

to complainants of sums where defendants carried less than $50,000, and that complainants received those applications and never made any complaints. Now, I ask you whether you had or complainants had any notice whatsoever that defendants intended to carry less than $50,000 on any risk at any time?

A. No, sir; never any notice received by us indicated it; not a single one.

Q. No notice at all?

430 A. No, sir.

NOTE.—It is admitted by complainants that the notices are in the usual form and they are in their hands, and that they are ready to surrender them at any time.

Q. Do you understand generally the meaning of terms and phrases in the insurance business?

A. Yes, sir; I do.

Q. For example, take the word "line," as you have been testifying "the defendants' line is so and so;" what does the word mean?

A. It means the sum they carry.

Q. Well, now, with respect to the term or phrase "excess;" what do you understand by that?

A. The excess above the amount they carry.

Q. Are you familiar with the mode and manner in which reinsurances are effected generally—that is to say, with respect to the manner in which it is done? For instance, a person or company goes to see you and tells you they want reinsurance, say on $10,000 or $5,000, on a certain vessel bound on a certain voyage, what, according to customs and usage, is understood as to the matter or thing that they are reinsuring?

Objection.—Mr. Sabourin, counsel for defendants, objects to the question and anything that hereafter may be made by counsel for complainants concerning the usages and customs of reinsurances, if they tend in any way to vary or change or take away or diminish or amend or set aside the contracts of reinsurance as made between complainants and defendants.

A. If a party would come in and ask me to reinsure any
431 amount, of course he leaves the impression he is carrying a line on the vessel. If he don't carry a line I would take no risk.

Q. I understand you to say, when a person makes application for insurance it is expected that the person is procuring reinsurance over and above what he usually carries?

A. Yes, sir; we so understand it.

Q. Every ins. co. has a line?

A. Yes, sir; every one of them.

Q. Now, with respect to all companies, does this line vary in amount, or do all the companies carry the same line?

A. No, sir; each company carries its own line.

Q. The larger companies carry greater lines than the smaller companies?

A. Yes, sir; they can afford it better, and it all depends on what capital they have and the amount of business they do.

Q. Now, then, tell us, if you know, what fact or facts are material to be disclosed in procuring reinsurance?

Objection.—Mr. Sabourin, counsel for def'ts, objects to the question on the ground that is a matter of law and the special contract of the parties, and not a mere matter of opinion.

A. There is no company that will take the risk of reinsuring another company unless they are satisfied that the company reinsured is carrying its line.

Q. I understand you that, according to the customs and usages of reinsurance people, no company will reinsure the whole risk that another company has without the fact being disclosed?

A. No company accepts the risk of reinsurance.

432 Q. That is what I understand you to say?

A. Yes, sir; no company would accept the risk.

Q. Take, for example: I am engaged in the business of insurance, and come into your place of business and tell you that I have $40,000 on the bark Swordfish, bound from Cuba to Montreal, and I have insured $35,000 and want the balance, $5,000, reinsured.

A. I will simply ask you why you do not insure your whole line.

Q. Then, I understand you to say the insurance men do regard the line that the reinsuring company carries as material.

A. Of course they do. They do not look into the risk at all.

Objection.—Mr. Sabourin, counsel for def'ts, objects to the question on the ground that it is a matter of law and not of opinion.

Q. How much money has the complainants paid the defendants upon the reinsurance of the bark L. E. Cann?

A. On July 24th, 1883, paid $2,082.03, and on Dec. 29th, 1883, paid 441.93.

Objection.—Mr. Sabourin objects to the question and answer on the ground that it is irrelevant to the issue.

Q. Upon whose application do you make the payments?

A. They (defendants) generally paid themselves with the monthly returns. The money coming to us was generally eaten up.

Q. At the time these monies were paid did complainants know that the defendants had not carried a risk for $50,000 on the bark "L. E. Cann?"

A. No, sir; the bill did not show it and we had no means of knowing it.

433 Q. You did not know it?

A. No, sir; we did not know it then, it was only after we paid.

Q. Now, with respect to the amounts of monies mentioned in the bill of complaint, which bill says "were paid in error," did complainants know that the defendants had not carried the several risks mentioned in the application?

A. No, sir; we did not know.

Q. When was it that the complainants began to ascertain or conjecture that defendants were not observing the terms of these policies (marked Y 1 to Y 5)?

A. In the year 1883.

Q. About what time?

A. About May or June I began to feel uneasy and I had a great many applications from defendants on hand then and I wrote for information.

Q. When was it that you first received positive information?

A. In November, 1883, I received it positively and immediately cancelled the policies.

Q. When did you get the first information and how?

A. The first information I got was when I made inquiries as to the amount they (Ins. Co. North America) retained on the bark Adele, and 2 days after that I concluded to cancel the policies and informed them of it.

Q. How did you get that information that they were not carrying their line on that bark?

A. From a letter written by Mr. Wm. A. Platt, second vice-pres't of the Co.

434 Q. Is this it (letter shown witness marked X 11, 4, 15, '85)?

A. Yes, sir.

Offer.—Mr. Sansum, for complainants, offers the letter marked X 11 in evidence.

Q. This letter, which is dated Nov. 23d, 1883, is the first information that complainants had that defendants were not carrying their usual lines?

A. Yes, sir; and on the receipt of this letter I instructed them to have all complainants' contracts cancelled, and they were cancelled on Dec. 1st, 1883.

Q. Whom did you instruct?

A. Mr. Smith; the letter was addressed to him; and I state further with regard to that vessel, the "Adele," that defendants first stated that the amount retained on her by them was $28,000, and later on we ascertained they did not carry $11,000, and later still we ascertained that they did not carry anything on her at all.

Q. In the first instance from whom did you get information?

A. From Mr. Platt, through Marshal J. Smith & Co., or the letter Mr. Smith rec'd from Mr. Platt (marked X 11).

Q. When did you get your second information that they did not carry anything?

A. I wrote to the defendants for information concerning that and other vessels and they stated that they carried $10,144.

Q. Where is the letter?

A. That is the letter (X 11) I speak about, and when we got to the bottom of the matter we found out they had not a dollar on the vessel.

435 Q. Well, then, *as* I understand you to say that the complainants sent to defendants and asked them to state what

they had carried on the vessels mentioned in this list (marked X 12, 4, 15, '85)?

A. Yes, sir.

Q. And this list (marked X 12) is the list defendants sent in answer to that inquiry?

A. Yes, sir; and we wrote asking for the date of the arrivals of the vessels, and they stated the dates were not kept.

Q. According to this list (marked X 12) defendants state they carried how much on the bark Adele?

A. $10,144.

Q. The letter marked X 11 says they carried how much?

A. $28,000.

Q. And what were the final developments reached?

A. That they carried nothing at all on the Adele.

Q. Here is a letter of March 7th, 1883 (marked A 4), addressed to Marshal J. Smith & Co., in which it is stated by the writer, Mr. Platt, "I have no facilities for reducing the lines of the Hibernia Ins. Co." I desire to call your attention to the language used and ask you to state whether it was at that time you requested Mr. Smith to get information.

A. It was in 1883 that I did not feel satisfied and saw Mr. Smith, as I did not want to hurt the old gentleman's feelings.

Q. What old gentleman?

A. Mr. Platt; and it was at that time I reduced the lines we were carrying and asked them to reduce our lines, and they said they had no facilities for doing it.

436 Q. What I want to know is whether it was at that time that you tried, through Marshal J. Smith & Co., to obtain information as to the lines defendants were actually carrying.

A. Yes, sir; I tried to get information, but did not get any.

Q. That is what Marshal J. Smith & Co. gave you (letter marked A 4)?

A. Yes, sir.

Adjourned to Monday, April 20th, at one p. m.

437 U. S. Circuit Court, Eastern Dist. of Louisiana.

HIBERNIA INS. CO.
*vs.*
INS. CO. OF NORTH AMERICA. } No. 10647.

NEW ORLEANS, *Tuesday, April 21st*, '85—12 m.

Present: The master (Hon. A. G. Brice); Mr. Sansum, representing complainants.

NOTE.—After waiting for half an hour, and Mr. Sabourin, counsel for defendants, after having due notice *and* not appearing, Mr. Sansum motioned that testimony be taken, which was granted, reserving to counsel for defendants his right to object and cross-examine.

PAUL FOURCHEY, being duly sworn on behalf of complainants, testifies as follows:

Direct examination by Mr. SANSUM:

Q. I believe you are engaged in the business of insurance?
A. I am president of the Merchants' Mutual Ins. Co.
Q. Of New Orleans?
A. Yes, sir.
Q. How long have you been engaged in that business?
A. For twenty-six years.
Q. Are you familiar with the customs and usages prevailing among insurance people?
438 A. I am.
Q. Are you familiar with the meaning of the words and phrases used by insurance people?
A. Yes, sir.
Q. Now, referring to the business of reinsurance, will you state, if you know, what the custom and usage is, taking into consideration the customs and usages that prevail—whether, when the first insurer makes application for reinsurance, it is understood that he is procuring reinsurance to the whole amount taken by them or whether he is procuring reinsurance on a part only?
A. I have never known a single instance of entire reinsurance. It is customary that a company taking more than it wishes to carry insures the excess. I do not remember any case where the whole amount was reinsured, except in cases where the company was in liquidation.
Q. Then is it your understanding of the customs and usages prevailing that when reinsurance is procured it is for part of the risk only?
A. Yes, sir; to my positive knowledge.
Q. Now, are you familiar and able to tell us what is understood by the phrase "usual line" or "usual lines" which is used by the insurance companies?
A. Every company fixes for itself, according to its capital, or the boldness of its officers, or the demand for business, a certain line to be carried on its risks. This line varies according to the standing of the company and the wisdom of its officers. Our usual
439 lines are from $5,000 to $10,000. Each company fixes its usual line. By looking at the books of a company you can easily find what their usual line is.
Q. So, I understand you, each company fixes its own lines?
A. Yes, sir; according to its size; the usual lines are made on its capital.
Q. For instance, a company having a capital of $500,000 can have a $10,000 risk or line?
A. Yes, sir.
Q. Now, will you please state, according to the usages and the customs prevailing, what is the meaning of the word "excess?"
A. Excess over the usual lines. I will say here that the party applying for reinsurance retains at least as much as he reinsures.

Q. Now, then, supposing a company reinsuring a risk applies for reinsurance, but says nothing about excess or about its usual line, what is the understanding among insurance men?

A. That it is on the excess.

By the MASTER:

Q. Suppose a company applies to your company and request you to reinsure them to the extent of $5,000 on a certain vessel bound for a certain port and make no statement except the simple application for reinsurance, and you accept it and afterwards find out they carried nothing in the vessel at all, but reinsured everything. Now, is it customary among insurance companies to pay a risk in that case?

A. I have never known of a case of that kind where it was done.

Q. What would be the rule in such a case?

440 A. I would certainly refuse to pay the risk if such a thing happened to my company, and if I had already paid the risk I would then proceed to recover it.

Q. Suppose the vessel is insured with the cargo for $60,000 and your company carries on simple application an excess of $5,000 on $30,000 and a loss happens to the vessel and cargo and you find out that the company carried nothing on it, what would you do?

A. I would consider I was deceived.

Q. Your company would not pay the loss, then?

A. No; we would not under the customs pay the loss. I will go further; if I discovered it before the loss I would immediately cancel the policy and not pay the loss, and if I had paid the loss I would take steps to recover it.

Q. You have heard of such a case as that, have you not?

A. I never heard of such a case except when a company was in liquidation.

Q. Does your company reinsure?

A. Yes, sir.

Q. You never knew of a case where in your business the first insurer carried nothing?

A. I have no recollection of such a case.

By Mr. SANSUM:

Q. Suppose an insurance company having insured a large amount on a vessel bound on a certain voyage got your company to reinsure them for a certain sum, and that the reinsurance which they made with your company and other companies amounted to the

441 whole amount that they had first insured, would you deem that fact that was not disclosed to you material?

A. Yes, sir; certainly.

Q. Why?

A. Because when we accepted the insurance we took it for granted that the insurance company applying for reinsurance had fully looked into the matter and examined the risk and had kept their usual line.

Q. The fact that the first insurer is carrying part of the risk gives character and standing?

A. Yes, sir.

Q. Suppose the first insurer informed you he did not intend to carry any risk, would you reinsure him?

A. No, sir; I would not.

NOTE.—Adjourned to 1 p. m.

Present: The master; Mr. Sansum.

JOSEPH A. CHALARON, sworn on behalf of complainants, testifies as follows:

Direct examination by Mr. SANSUM:

Q. You are engaged in the business of insurance in this city, are you not?

A. Yes, sir.

Q. Taking fire and marine risks?

A. Yes, sir.

Q. How long have you been engaged—about?

442 A. About ten years.

Q. Are you the president of any company?

A. I am the president of the Hope Ins. Co. of New Orleans.

Q. Are you familiar with the customs and usages and do you understand the meaning of the words and phrases used generally in the insurance business?

A. I think I am.

Q. Now I call your attention to the business of reinsurance particularly, and beg you to state what the custom and usage is with respect to the forms necessary in procuring reinsurance, and whether, when a company applies for reinsurance, it is understood that they are procuring reinsurance upon the whole amount or upon a part only.

A. The custom is that whenever a company applies for reinsurance, unless they state that they are reinsuring their whole line, it is the understanding between the companies that they are insuring the excess of the line they habitually carry on such risks.

Q. Will you state, if you know, when the phrase "usual line" or "usual lines" is used among insurance companies what is understood by that phrase?

A. Well, it is understood by that phrase a line that a company deems sufficient to carry on any risk.

Q. Without procuring reinsurance?

A. Yes, sir.

Q. Now, if you know, will you state what is meant by the term excess, as used by insurance companies in procuring reinsurance?

443 A. The understanding or meaning of the word "excess" is anything above the habitual or usual line that a company keeps or carries.

Q. Suppose that a company procuring reinsurance with you re-

port a risk to you and you accept it and it turned out that they had not only reinsured with you alone, but with other companies to the whole amount of the risk they had taken, and you were informed of the fact after the loss had occurred. What would be the general understanding?

A. I would certainly consider that I had been deceived and defrauded.

Q. In what respect?

A. That the company had some good reason for reinsuring the whole amount, and that they had failed to inform me and allowed me to take the risk, which I would not have taken if I had known they intended to reinsure the whole amount without my first inquiring into it before reinsuring. When we reinsure a company or whenever any other company reinsured another the good faith of the company is guaranteed.

Q. Then I understand you to say that you reinsure the first insurer upon the faith that he is carrying his full line?

A. Yes, sir; if we were informed otherwise we would want to know why they were reinsuring the whole amount, and would inquire into the matter before reinsuring them.

Q. Suppose that the first insurer applied to you for reinsurance and you understood from him that he was carrying nothing on the risk; would you take the risk?

A. I would not take it without first inquiring into it myself.

444 Q. How far does the understanding you have here given of these matters prevail?

A. Here in New Orleans, La., it is generally understood when a company reinsures without stating anything that they are reinsuring the excess of their line or carrying their usual line.

Q. Failing to disclose to you the fact that they were reinsuring their whole line, you would deem it unfair?

A. Yes, sir; and if my company was caught in any such position I would resist payment, and, if I had paid, endeavor to recover.

By MASTER:

Q. Did you ever hear of a company reinsuring the whole amount without disclosing the fact?

A. I do not remember of any such case.

Q. Never heard of such a case?

A. No, sir; never.

Q. When you use the term fraud or defrauded do you mean that you would deem you were deceived if they got you to reinsure them without informing you they were not carrying their line themselves?

A. I would consider that I was deceived by concealment of important facts, which, if I had known, I would not take the risk.

Q. Is it customary in this city for insurance companies to take risks from other companies in cases where the lines are carried?

A. Why certainly.

Q. Is it a common thing?

A. Yes, sir; we often take a $40,000 risk on a vessel. Our line is

$5,000, and we reinsure the excess, $35,000, and when we send any company a line they feel satisfied; we keep our line; it is a tacit understanding. I have never known of a single exception.

445 U. S. Circuit Court, Eastern Dist. of Louisiana.

HIBERNIA INS. CO.
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

NEW ORLEANS, *May 7th*, 1885.

Present: The master (Hon. A. G. Brice); Mr. Sansum, for complainant; Mr. Sabourin, for defendants.

JAMES PREVOST recalled for complainants.

Direct examination by Mr. SANSUM:

Q. I now call your attention to a paper put in evidence by def'ts, marked "B 8," which purports to be an account current, showing the balance due the defendants by the complainants on March 12th, 1885, to be $271.87. Now, I want to know whether you have made any account for the complainants in the shape of a final account, and, if you have, then state whether this paper (marked "C," 5, 7, '85) (witness handed paper) is that account?

A. Yes, sir; that paper, "C," is our bill against the defendants.

Q. Now, in presenting an account to you, has the defend-
446 ants given the complainants credit for premiums on the risks mentioned in your account marked "C?"

A. No, sir.

Q. The risks for which complainants are not giveu credit for are as follows:

1st. On b'k Seawitch; risk, $5,000; premium, $75.
2nd. On b'k Mary L. Stone; risk, $5,000; premium, $75.
3rd. B'k J. D. Brewet; risk, $5,000; premium, $150.00.
4th. B'k Verlard H. Hopkins; risk, $5,000; premium, $75.
5th. B'k Bertrand; risk, $5,000; premium, $75.
6th. B'k A. M. Simpson; risk, $5,000; premium, $182.82.
7th. S. S. Selembria; risk, $5,000; premium, $75.

I now also see that in this statement, marked "C," you have debited the defendants with salvage received by them from the b'k Arthur C. Wade, amounting to $1,181.53?

A. Yes, sir; that salvage is due us.

Q. Then the whole amount, according to this statement marked "C," due by defendants to complainants on premiums and salvage amounts to $1,889.35?

A. Yes, sir.

447 Q. Is that correct?

A. Yes, sir.

Q. Now, in these accounts (marked B), delivered unto the master by defendants, I observe that complainants are debited with a number of losses, large and small, amounting to $1,240 or thereabouts.

Now, I want to know if you have given the defendants credit in this statement (marked "C," 5, 7, '85) for these losses?

A. No, sir.

Q. Why have you not done so?

A. Because they furnished no proof of those losses.

Q. Then I understand you to say that the balance which appears to be due by defendants to complainants for premiums and salvage, as per account (marked "C," 5, 7, '85), amounting to $1,889.35, does not take into consideration the claims that defendants made in their account for these losses?

A. No, sir.

Q. And does not appear in your account (marked "C," 5, 7, '85) because defendants have failed to give you proof of those losses?

A. Yes, sir; because they failed to give proofs at all.

Q. That was the only reason why you did not give them credit for those losses?

A. Yes, sir.

NOTE.—Mr. Sansum, counsel for complainants, here states that if defendants will furnish complainants with proper vouchers showing the losses they claim, complainants are perfectly willing and prepared to allow those claims.

448 *Testimony Filed Before A. G. Brice, Master.*

United States Circuit Court, Eastern District of Louisiana.

HIBERNIA INS. COMPANY
*vs.*
INS. CO. NORTH AMERICA. } No. 10647.

NEW ORLEANS, *May 28th*, 1885.

Present: Hon. A. G. Brice, master; O. B. Sansum, Esq., for complainants; E. Sabourin, Esq., for def'ts.

Index: James Prevost, p. 1; Paul Fourchy, p. 48; Chalaron, p. 78.

NOTE.—In conformity with the reservation made on the — day of ——, 1885, granting def'ts the right to object to the testimony and cross-examine the witness, as per said reservation, the following objections and cross-examination are made.

Admission.—As to the claims which have been paid by defendants and for which no special proofs of loss have been furnished complainants, counsel for complainants admits that defendants paid said claims upon proofs of loss furnished them by their dealers.

NOTE.—Complainants now close evidence, subject to the right of cross-examination and all legal exceptions and objections as counsel for defendants deems proper, said cross-examination, exceptions, and objections to be made on or before the 17th May, 1885, so as to give counsel for defendands time to correspond with defendants in Philadelphia relative to facts not obtainable here.

JAMES PREVOST recalled for complainants.

449 Cross-examination by Mr. SABOURIN:

Q. Who is the person indicated by "A. P.," signing for Charles Platt, Jr., on Exhibit "X[1]" and other exhibits similarly signed?

A. (Witness examines Exhibit X[1] and answers:) I don't know from my own personal knowledge. I was told it was Mr. Pecoley, but I don't know.

Admission.—Counsel for complainants admits that the person signing "A. P." was a clerk of Charles Platt, Jr.

Q. On page 20 of the examination-in-chief, speaking of Exhibit No. 1, referring to the ship Obey for reinsurance on sugar, being in excess of $25,000, how could this reinsurance apply, as stated in the application of defendants, for reinsurance of $10,000 on sugar only, to other cargo on board of that vessel and how could the distinction be made on a vessel to the Philippine Islands?

Objection.—Counsel for complainants objects to the question as being a question for the court to decide.

A. The application only stated sugar, but there might have been other things on board—other cargo or freight besides sugar.

Q. When you receive such an application as Exhibit No. 1 does it not mean that a vessel coming from the Philippine Islands at that season of the year carries a whole cargo of sugar and nothing else?

A. No, sir; we could have no knowledge of that.

Q. From your general knowledge of the business of insurance, taking into consideration the season of the year, the fact that the cargo comes from the Philippine Islands, and that the application states sugar, is this application "No. 1" not fully equivalent

450 to stating that there is only a cargo of sugar and nothing else?

A. It does not show that.

Q. When there is a mixed cargo is it not so stated in the application?

A. Sometimes it is.

Q. Is it not always so?

A. No, sir.

Objection.—Counsel for complainants objects to this argument between counsel and witness, as it is a matter for the court to decide.

Q. From your knowledge of cargoes that come from different parts of the world at certain seasons of the year and from the fact that this application, "X[1]," states that it is a cargo of sugar, did you not understand that it was a cargo of sugar and nothing else?

Objection.—Counsel for complainants objects to the question on the ground that the paper does not say on a cargo of sugar.

A. No, sir; it does not.

Q. Do you remember the fact of your receiving that application "X[1]" from Philadelphia?

A. It came into the office and I made the entry.

Q. What then did you take it to be; didn't you take it to be an insurance on a cargo of sugar only?

A. I took it to be an application for reinsurance of the excess of the line they agreed to carry.

Q. On sugar?

A. No, sir; the excess of the line of $50,000.00. Our policy was on the excess of their line of $50,000.00.

451 Q. What could make you think that there was anything else but sugar on that ship Obey?

A. They (North American Ins. Co.) had all the knowledge; we had none. They must have known what was on her. They sent us the application and we reinsured.

Q. Upon an application in the form of "X[1]," that speaks of sugar on board the Obey, does such an application mean a cargo of sugar or a mixed cargo?

A, I don't know.

Objection.—Counsel for complainants objects to the question on the grounds that the language of the application is to be interpreted by the court and not by the witness.

Q. Is it not a fact that the term sugar in such an application for reinsurance means and was understood by you to mean, and in accordance with marine usages to mean a cargo of sugar and nothing else?

A. There is nothing to show to that effect.

Q. Now, you state on pages 20 and 21 of your examination-in-chief that when you received Exhibits X[1] and X[2], which state $25,000.00 or $30,000.00 or $40,000.00, that you went to Marshal J. Smith & Co. and that they said to you that there might be other freight aboard of that vessel. Now, what induced you to go and ask this of Marshal J. Smith & Co.?

A. The application showed that they were only to carry on the cargo so much, and I said to them (Smith & Co.) that our line was $50,000.00, and that I wanted to know if they (def'ts) were
452 going to carry that line, and they said that the company would hold to their contract.

Q. They said that the Ins. Co. of North America would carry their full line?

A. Yes, sir.

Q. Why did you go to Marshal J. Smith & Co. to make that inquiry?

A. Because they received the applications and kept the correspondence of Ins. Co. of North America.

Q. How did they come to keep the correspondence?

A. Because they are the agents of the Ins. Co. of North America.

Q. I want to know why you addressed Marshal J. Smith & Co., and also whose agents were Marshal J. Smith & Co. in this transaction of reinsurance between the Ins. Co. of North America and the Hibernia Ins. Co.

Objection.—Counsel for complainants objects to the question on the ground that it is a question to be decided by the court and not by the witness.

A. I went to them because they were keeping the correspondence and received the applications, and I supposed that on that account they were better informed than we were.

Q. With whom did they correspond?

A. With Charles Platt, Jr.

Q. They (Smith & Co.) did not keep a correspondence with the defendants, The Ins. Co. of North America?

A. I don't know from my own knowledge.

Q. Now, you have stated somewhere in your examination-in-chief that Marshal J. Smith & Co. were agents for the Ins. Co.
453 of North America. Do you mean that they are agents of the Ins. Co. of North America in this business of reinsurance between the Ins. Co. — North America and the Hibernia Ins. Co.?

A. I don't think I stated that I said they were their agents in New Orleans.

Q. I mean specially as to this reinsurance between the North American and the Hibernia.

A. They may have been, but I don't know.

Q. Did not the Hibernia Insurance Co. itself pay the brokerage to Smith & Co.?

A. They generally paid themselves.

Q. Smith & Co. paid themselves, out of what came to the Hibernia Ins. Co., their proportion of the premium?

A. Yes, sir.

Q. And gave the Hibernia the net balance?

A. Yes, sir.

Q. Therefore they were paid by the Hibernia Ins. Co. their brokerage?

A. Yes, sir; the North America might have paid them also.

Q. You know you paid them?

A. Yes, sir.

Q. You cannot say that the North America paid them?

A. I cannot say that.

Q. When you speak of lines of insurance that are usually carried by insurance companies, don't those lines vary considerably in accordance with the vessel, the season, the length — the voy-
454 age and the place of the voyage, and the circumstances then existing?

A. Yes; sometimes companies reduce their usual lines; but in such cases they don't carry their usual line.

Q. Then a company may change its lines at times, according to the usage of the company?

A. They might sometimes change; but in such cases they don't carry their usual line.

Q. In other words, you might think proper to take a risk of $5,000.00 and carry that line, and at another time carry $10,000.00

or $20,000.00, and then all at once think the risk greater and carry nothing?

A. That depends entirely upon the condition of the company; but if they had a contract they would have to carry it out.

Q. Then, except a company be engaged by contract, it could vary its line at its own will?

A. Yes, sir; they can do it.

Q. Then a company, unless it was bound by contract, could change its line of risk at any time?

A. Yes, sir.

Q. Has your company (Hibernia) ever done reinsurance business besides this one with the North America?

A. Yes, sir; but not under contract.

Q. Your experience and the experience of your company with the marine insurance in far-off oceans, such as the Pacific and Indian, is not great; in other words, you have little experience?

A. Yes, sir; very little.

455 Q. Did you have any other experience besides that of the North America Ins. Co.?

A. No, sir; none except on vessels from New Orleans to northern ports.

Q. You have stated, I believe, that if a company first insuring as with your company upon an open policy, stating the excess to be, say, $50,000.00, $60,000, or $70,000, that your company will become liable for a fixed amount—say $10,000.00—upon that open policy provided the company first insuring will never carry less than $50,000, $60,000, or $70,000.00 as its line. Now, I want to know how you make that out?

A. If they agreed to carry that amount as their line and they made the policy on that agreement we are not bound unless they carry their line.

Q. You mean to say that if a company procures reinsurance on an open policy it cannot procure reinsurances with other companies?

Objection.—Counsel for complainants objects to the question on the ground that it is a question of law.

A. If I take a contract with an insurance company to reinsure my excess I would not go around and reinsure more than that excess without giving notice. I never have done it and I would — do it.

Q. Your experience in this matter is not very great?

A. That makes no difference.

Q. Do you know what are the usages relative to marine insurance in Philadelphia, Boston, New York, and England?

456 A. I don't know, but I know what is considered right and what is considered wrong; I know that much. I don't know the customs of those places.

Q. How can notice be given to you of what amount is carried when the ship is insured on an open or flat policy, as for the Philippine Islands? How can they tell from the information given by

their agents or from the application for the contract of reinsurance whether any risk is carried or not?

Objection.—Counsel for complainants objects to the question on the ground that it is an argumentary question.

A. It is not necessary for them to know.

Q. It is almost impossible where a company carries on an open policy, say $50,000.00, on a vessel at such a great distance as the Philippine Islands, and considering the time necessary to receive news, for that company to know how much it really carries without—until the particulars reach it?

A. They can always know it, because if they carry $50,000.00 they insure for $50,000.00 and run the risk; or if they carry $60,000.00—that is, $50,000 for themselves and reinsure $10,000.00, they must pay the loss first, and if it is over $50,000.00 the company reinsuring must pay what is over $50,000.00.

Q. Suppose the company knows of the loss only after it has occurred and the loss does not amount to the whole insurance?

A. If the loss did not exceed the amount carried by the company reinsuring, that company has to pay all of it; if it exceeds that amount, the reinsuring companies have to pay it *pro rata*—that is, the excess. For instance, if you make an application to re-
457 insure your excess of $50,000.00 and the whole amounts to $100,000.00 and the loss amounts to only $50,000.00 the company originally insuring has to pay all of it; but supposing it it $60,000, then the reinsuring Co's have to pay $10,000 *pro rata*.

Q. Why do you *pro rata* it?

A. Because they all had that much interest at that time.

Q. Suppose that in a case like the Adele, where the line given to the company was $114,000.00 and the company only retained $25,000 or $30,000 on that risk, would it not be proper for that company to seek reinsurance on flat and open policies so as to reinsure the total line taken by them?

A. That would not be right.

Q. Why?

A. Because the reinsuring companies would have to pay the whole loss.

Q. Now, suppose a risk was taken of $114,000.00, as in the case of Adele, by the Hibernia Ins. Co. and on account of her (Adele) being at such a distant port news could not reach here—now, would it be proper for the Hibernia to reinsure all the $114,000 except $25,000.00, either on flat or open policies? Would that be a proper transaction?

A. No, sir.

Q. Why?

A. Because if a man makes an application to cover $114,000 and my line is $60,000 and would only reinsure the excess.

Q. But suppose your line was only $25,000, would you consider it a proper transaction?

A. Not by any means, because it would not be straight.

458 Q. Why?

A. Because if a man comes and makes application for reinsurance to me and says he wants to reinsure $70,000.00 and only keeps $50,000, which is his line, I would not reinsure him.

Q. Why?

A. Because there is a doubt; because he wants to reinsure more than he carries himself.

Q. Do you mean to say that it is the custom in Philadelphia, Boston, New York, and England?

A. I don't know the customs there.

Q. All this is your opinion?

A. Yes, sir, and my experience, too.

Redirect examination by Mr. SANSUM:

Q. You have been asked about Exhibit "X 1." Now, Exhibit "X 1" reads as follows: Insurance had been made in the Hibernia Insurance Company of New Orleans on open policy 268 for Insurance Co. of North America, payable in case of loss on sugar, $10,000, being excess of $25,000. Now, I ask you to state whether that statement, through any knowledge you possessed of the business, gave you the slightest information upon the subject of the question whether the Ins. Co. of North America would carry less than its usual line upon that voyage.

A. No, sir; there is nothing there to show.

Q. Was it not personally reasonable for you to understand from that paper that the Ins. Co. of North America might have a
459 risk on the hull of that vessel?

A. Certainly they could have had.

Q. Was it not personally reasonable for you to understand that the Ins. Co. of North America might have had a risk for freight on that vessel?

A. Yes, sir.

Q. Was it not reasonable and natural for a person from those words and figures to understand that the Ins. Co. of North America might have had risks on their cargo besides sugar?

A. Yes, sir.

Q. Do I understand you to say that when you received some of the notices or applications like Exhibit "X 1" that you went to see Marshal J. Smith & Co.?

A. Yes, sir.

Q. And called their attention to them?

A. Yes, sir.

Q. Now, did you not go to Smith & Co. just because of receiving notices of that kind and for the purpose of settling the question in your mind whether they were carrying less than their usual line?

A. Yes, sir; that was my reason.

Objection.—Mr. Sabourin objects to the question as being leading.

Q. Now, referring to the bark Adele, was it not perfectly apparent to the Ins. Co. of North America when they received the notice of reinsurance from their correspondent at the port of shipping or when the consignees received notice of the whole amount of the cargo

what amount they were to carry, and did not these notices fully advise them as to the amount?

460 A. Yes, sir.

Q. And, in accordance to the same notices and the knowledge of insurance people generally, were they not advised by the same notices that they had either an excess of their usual line or that they had no excess?

A. Yes, sir.

Q. And therefore they were able to know whether they had anything to reinsure or whether they had nothing to reinsure, in so far as their contracts of open reinsurance are concerned?

A. Yes, sir.

Recross by Mr. SABOURIN:

Q. How could the Ins. Co. of North America get such precise details and such rapid news when it takes such a long time to hear from the Philippine Islands?

A. They knew about it when they insured.

Q. Take the case of the Adele, which has been stated to you. The loss occurred before the full cargo had been taken on board, and therefore how could they, previous to receiving the papers showing the loss, have known the precise loss?

A. They could have carried their line of $50,000, and if they wanted to carry more they could have reinsured that excess.

Q. You are assuming they must have carried $50,000?

A. Yes, sir; certainly.

Q. Suppose they carried less?

461 A. They had no right to.

Q. Would you have carried less?

A. No, sir; not by any means.

Q. How can reinsurance be effected if you don't know the amount?

A. It makes no difference; you reinsure the excess of your line and nothing more.

Q. Now, referring to the question put to you by counsel for complainants relative to Exhibit "X[1]," I want to know why you should infer that the Ins. Co. of North America held other insurance than sugar, such as you stated, on the hull or freight, when the application simply, clearly, and only states $25,000.00 on sugar. Would that not lead you to believe that the only insurance held on that ship by the Ins. Co. of North America was on sugar?

A. No, sir; not by any means.

Q. How do you explain that?

A. Because there might be other goods on her, such as coffee, freight, and other things.

Q. You claim in your bill of complaint that the line of Ins. Co. of North America should have been $50,000, $60,000, and $70,000 and nothing less. Would not your attention have been awakened by an application for only $25,000.00 on sugar?

A. No, sir; sugar is insured differently; sugar is insured on a percentage.

462 PAUL FOURCHY recalled for cross-examination.

Objection.—Mr. Sabourin, for def'ts, in conformity with the reservation noted on page 1, objects to all and any questions bearing on customs or usages prevailing amongst insurance companies; also to the meaning of words and phrases used by insurance people; also to the personal knowledge or experience of insurers and of witness and what he would or should do under certain circumstances or contingencies or judgment, and also to the opinion of the witness relating to certain special cases or experiences put herein, on the ground that such questions and answers are totally illegal and irrelevant to the issue, and that it is not a matter of usage and meaning of words and experiences, judgment, and opinion of witness, but are matters of interpretation of contract between complainants and defendants and of the faithful performance *vel non* of such contracts.

By Mr. SABOURIN:

Q. When you state in your examination-in-chief that a company applying for reinsurance is presumed to keep its usual line do you mean to say that its usual line cannot vary according to circumstances, the season of the year, the vessel, the voyage, and the length of the voyage?

A. Yes, sir; certainly they vary.

Q. Then a company may carry a line from $30,000 to $50,000.00, to $60,000, and $70,000 at different times of the year and

463 according to circumstances?

A. Yes, sir; according to the season of the year.

Q. Do you know of any company binding themselves for a very large amount for a whole year upon an open policy?

A. I have never heard of a single case.

Q. Do you know of any company that would bind itself to carry at all times the same line for one year or a number of years, especially a line as large as $50,000.00?

A. I cannot say I do.

Q. That would be a very unusual proceeding, would it not?

A. I do not know of any such case.

Q. Are you acquainted with the insurance customs and usages that prevail at New York, Philadelphia, Boston, and those of England?

A. I have very few dealings with outside companies, and I cannot say I am. I am only acquainted with local customs here.

Q. Is not the largest amount of marine insurance carried on by those cities I have mentioned, especially on long voyages?

A. Yes, sir.

Q. Therefore the usages as to those matters that prevail in those cities would probably be the custom?

A. Not necessarily. We have a great many local regulations, as a general rule. It would be subject to local exceptions.

Q. Do you mean to assert that in no case the whole amount could not be reinsured?

A. I mean to assert that no sane underwriter would take such a risk.

Q. Have you heard of such a case?

464 A. No, sir; except when a company went into bankruptcy. Why, it is a company's business to take risks, and if they don't take a risk themselves something is the matter.

Q. You cannot say that that is not done in the cities I have named?

A. I cannot say.

Q. Do you do a large marine business?

A. Not at present; but we have done a very large business.

Q. On the Mississippi river?

A. Everywhere.

Q. On the ocean?

A. Yes, sir.

Q. Did your business extend as far as the Pacific and Indian Oceans?

A. No, sir.

Q. Does your experience cover voyages of long periods of time, such as two months, 3, 5, 6, & 7 months?

A. Very seldom.

Q. Voyages during which very little could be heard of the vessel?

A. Most of our insurances were on direct voyages, from point to point; from Liverpool here and back.

Q. So you never held open policies for large amounts on vessels trading in those distant places?

A. No, sir.

Q. Therefore your experience does not extend to knowing the difficulties experienced by companies who do insure to distant ports of ascertaining the exact amount it is carrying?

465 A. Yes, sir; in those cases we never know what we are carrying.

Q. Is it always possible for a company to know exactly at all times the true amount of property that may be carried under any one policy?

A. It is not. The only way reinsurance is effected in that way is to insure a certain line. For instance, I insure a vessel for $20,000; my line is $10,000; therefore my idea is to carry $10,000 and to reinsure the excess, which is the other $10,000.00.

Q. Now, suppose a vessel at the Philippine Islands takes a cargo to different ports on which you expect a probable line of, say, $114,000, and your usual line, say, is $25,000.00, and you are covered for your excess; now, suppose you reinsure flat.

A. When I have a vessel I make up my mind to carry a certain line. I make my own figures, and when I have determined what I will carry I reinsure the excess, whatever it may be. If I make up my mind to carry $20,000 on that vessel, then I reinsure in other companies until I cover the whole amount of the excess.

Q. Now, if you covered the whole amount and a loss took place before the cargo is completed.

A. If I covered the whole amount and there is nothing at risk there would be no insurance.

Q. Then you would not pay any premiums?

A. No, sir; because there was nothing at risk.

Q. Has any case happened in this city where the things insured were not on board of the vessel?

A. Such cases occur every day where there is no risk and the premiums are returned; and when the vessel arrived here
466 and you found out you had no goods on board you returned the premium; it was a mistake; you expected the goods and they did not come.

Q. That is only a local habit?

A. Yes, sir; and that is an universal habit; where there is no risk there is no insurance; there must be risk to be insurance.

Q. Could not the original insurer reinsure the whole risk?

A. No, sir; because if you offered the reinsuring Co. the whole risk they would have refused it. It is the business of companies to take risks, and if they will not have anything to do with it — is natural that the reinsuring company won't.

Q. Have you not sometimes knowingly, both by flat and open policies, reinsured much more than you originally carried?

A. Yes, sir; by special agreement, sometimes.

Q. Is it not impossible sometimes for the company insuring to know the exact amount always of the property on a vessel?

A. Yes, sir; sometimes, but I cannot see how that affects it. You insure so much on a vessel and carry your line and reinsure the excess.

Q. It is always possible, especially in case of a vessel between ports, to ascertain the amount carried until the particulars are furnished?

A. It is not possible.

Q. And in distant cases it takes considerable time?

A. Sometimes it does.

Q. Might not and does not under such circumstances it frequently occur that a loss happens before the particulars and amount have been received?

467 A. Not frequently; there are such cases, but they are very few.

Q. Suppose a Philadelphia company having reason to expect from information given it would have to carry a risk probably on a ship touching at the ports, say, in Java and bound for Montreal of $100,000, on which this Philadelphia company intend to carry $25,000 and to protect itself reinsures some $50,000 to $70,000 either by flat or open policies, a loss occurs before the vessel has completed her cargo and have only about $40,000.00 on board, upon whom would the loss fall?

Objection.—Question objected to.

A. It would fall on the original company for their full line of $25,000 and on the reinsuring companies *pro rata* for the $15,000.00.

Q. Suppose the cargo on board did not reach the full line, what then?

A. Unless it reaches the full line there is no substance for insurance. Unless your full line is reached there is no insurance.

Q. Do you mean to say that when a company reinsures flat and says nothing about excess or usual line it is understood that it is reinsuring only its excess?

A. It is understood that they are carrying their line, and they cannot carry less than the amount offered to the other party.

Q. How do you reach such a conclusion?

A. Because that is the local custom in New Orleans.

Q. Do you know if that is the custom abroad?

A. I don't know.

468 Q. In such a case should not the company taking such a risk make inquiries?

A. They never make inquiries, because it is understood.

Q. When you reinsure flat are you not bound for the full amount of reinsurance, regardless of the excess of the usual line?

A. I would not be bound unless the company reinsuring keeps as large a line as offered to me. In other words, if the company reinsures for $10,000 and keeps only two thousand I would not be bound.

Q. You consider that to be the law?

A. Yes, sir; the law says that she shall carry a line as large as the line reinsured.

Q. A company carrying as large a line as $150,000.00 it would have to divide the risk between companies?

A. Yes, sir.

Q. All that you claim is that the company that effect the reinsurance has to carry as large an amount as the company reinsuring?

A. Yes, sir.

Q. But it might happen, perhaps, as in a case just now stated, when, by accident, nothing was carried?

A. Then there is no insurance.

Q. That would not apply any concealment of the material fact?

A. It would be concealment if, after it was discovered, they did not say anything, and it would be fraud to collect or retain premiums in such a case, and if such a thing happened to me I would proceed immediately to recover my premiums.

Q. That is your opinion?

A. Yes, sir; and my knowledge of practice here.

469 Redirect examination by Mr. SANSUM:

Q. Assuming that a vessel be bound from Java to Montreal and you expect $114,000 or $115,000 on her and you had open contracts of reinsurance covering the excess of your usual line and your usual line was a fixed sum—say $50,000.00. Now, you had procured reinsurance for $65,000, either upon open, direct, or what is called flat insurance. Now, you find from the final advices which are presented to you that a loss has occurred, and that instead of the vessel having $114,000.00 of cargo on she had only $35,000.00. Now, having

that knowledge, you proceed to your reinsuring companies and divide the risk out so as to leave nothing at all for you to lose; would that be fraud?

A. Yes, sir; it would.

Recross by Mr. SABOURIN:

Q. What do you call fraud?

A. When a custom is well established and you violate it knowingly.

Q. And do you mean to say that the case put to you—that it is not a material interpretation of the contract?

A. It depends upon the knowledge of the parties—it would be a legal fraud.

Q. If the customs were different?

A. The place of the contract governs.

Q. If the laws of Philadelphia, New York, Boston, and England were different from what you state the law to be here, would that be fraud?

470 A. It would be legal fraud.

Q. What is legal fraud?

A. It is fraud done without intention.

Q. You mean it would be a mistake?

A. Yes, sir.

J. A. CHALARON recalled for cross-examination.

Objection.—Mr. Sabourin, counsel for def'ts, in conformity with the reservation noted on page 1, objects to all and any questions bearing on customs or usages prevailing amongst insurance companies; also to the meaning of words and phrases used by insurance people; also to the personal knowledge or experience of insurers and of witness and what he would or should do under certain circumstances or contingencies or judgment, and also to the opinion of the witness relating to certain special cases or experiences put herein, on the ground that such questions and answers are totally illegal and irrelevant to the issue, and that it is not a matter of usage and meaning of words and experience, judgment, and opinion of witness, but a matter of interpretation of contract between complainant and defendant and that of the faithful performance *vel non* of such contracts.

Cross-examination by Mr. SABOURIN:

Q. When you state in your examination-in-chief that a company applying for reinsurance is presumed to keep its usual line, do you mean to say that its usual line cannot vary according to circumstances—the season of the year, the vessel, the voyage, and the length of the voyage?

471 A. Companies usually vary their lines according to the voyages and the time of the year. They fix a line on a certain voyage and they reinsure the excess of that certain line.

Q. Would a company fix a large line, say of $50,000.00, and stick to it?

A. That depends on the size of the company. I carry a line of $5,000.

Q. At all times?

A. Yes, sir.

Q. And on all vessels?

A. No; that depends on the character of the vessel, as — an "A No. 1" vessel I carry the full line and on other classes of vessels less.

Q. Your line of insurance might vary, then?

A. Yes, sir; according to the vessel only.

Q. Are you acquainted with the usages and customs of reinsurance as prevailing in New York, Philadelphia, Boston, and England?

A. Yes, sir; to a limited extent.

Q. Do you mean to say that in no case the whole amount of insurance cannot be reinsured?

A. In no case, without the reason being given, can you reinsure the whole amount. I have reinsured in England by cable when I thought the vessel was overdue, and I have always stated my reasons by cable of doing it, and in such a case, when I had other companies with me that I had reinsured, I gave them the privilege of total reinsurance.

Q. That was in a very special case?

A. Yes, sir; on vessels that were overdue.

472 Q. That was not the usual case on a long voyage?

A. No, sir; that is one case when we were anxious to reinsure the whole risk, and as it was meet our loss in advance.

Q. Does your direct marine business extend to the Pacific and Indian Oceans?

A. I have no contract, but I have some reinsurance in those quarters.

Q. Where is the largest marine business done in this country?

A. In New York.

Q. Has not Philadelphia the largest marine business?

A. No, sir; the largest amount is done in New York. The Atlantic and other companies there take the lead.

Q. The customs of these companies, then, would be considered the regular customs of insurance?

A. Naturally, as far as risks that go to that port is concerned, but not otherwise.

Q. In distant voyages, as in the Indian Ocean or in the Pacific Ocean, is it possible always for the company desiring reinsurance to know exactly, at all dates and at all times, the true amount of insured property that may be on board of any one vessel?

A. No, sir.

Q. Well, is it not possible for want of knowledge of the exact amount of insured property on board of the vessel that the amount of insurance applied for might be equal to or even larger than the total amount of the original insurance?

473 A. Certainly it is possible.

Q. You have seen such cases in business?

A. It happens sometimes.

Q. Well, what is done? Do the companies prorate when there is a loss in such a case?

A. If the loss exceeds the line the original company is compelled to keep, then the excess above that line is prorated between the reinsuring companies. If the loss is less than the line carried the original company pays it all.

Q. How can you tell about the usual line?

A. Every company must have a fixed line with the company they are doing business with. Those lines are stated and understood.

Q. Have you not reinsured on both open and flat policies where there was no risk at all?

A. Yes, sir; I have reinsured when I did not have 5 cents on board, by a mistake.

Q. Did you get the premiums back?

A. Most assuredly the premiums were returned.

Q. At all times?

A. Yes, sir; certainly.

Q. Is that within your actual knowledge?

A. Yes, sir.

A. Is it always possible on a ship at a distance or between ports, on flat insurance, to have particulars until the particulars have been furnished?

A. No, sir; it is not possible.

Q. Does it not often take much time?

474 A. It depends on the voyage. It takes, on a voyage from the Indian Ocean or the Pacific, some six months before you can know the real amount on board.

Q. Might not, on a voyage—on a distant voyage—a loss occur before it was reported?

A. Yes, sir.

Q. When a company reinsures flat, saying nothing about its excess or usual line, do you mean to say that it — always a reinsurance on excess only?

A. Yes, sir; it is always understood that a company keeps its line unless it discloses the reason for not keeping it.

Q. Did you say that that is the case in New York?

A. I think it is.

Q. In such a case, where nothing is said about usual line or excess, would not the company granting the reinsurance be presumed to have asked or made inquiries about the matter?

A. It is not customary here. It is almost a guarantee between companies that when they reinsure that the company applying for reinsurance are keeping their line on the risk.

Q. When you take reinsurance flat are you not bound for the full amount of the reinsurance, regardless of the excess of usual line?

A. Well, I would certainly resist the payment of flat insurance when I found that the company reinsuring with me had nothing on the risk and gave no reason to me for not keeping their line before I reinsured them.

Q. Suppose where companies are carrying on a single vessel such

475 large risk as $150,000 they must have reinsurance in different companies?

A. Yes, sir.

Q. They divide the risk amongst different companies?

A. Yes, sir.

Redirect examination by Mr. SANSUM:

Q. A company doing a large business, having a large capital, and taking risk of from $50,000 to $200,000 usually protect themselves by reinsuring?

A. Yes, sir.

Q. Now, a company of that kind having protected itself by reinsurance, say from ports in Java to ports in this country, is advised of a vessel bound from Java to Montreal, and that will have a risk of $115,000 on that vessel. Their usual line is $50,000 or $35,000, as the case may be. They proceed to get reinsurance either upon open or flat contracts, and apply to 5, 6, or 7 different companies—some upon open and some upon flat policies. Then a loss is reported and it is ascertained that the risk taken by all these reinsuring companies together amounts to or exceeds the whole amount that the original company have at risk, and when they have received the final reports say nothing about it; is that right?

A. Certainly it is —; it is deception.

Q. Now, suppose that they do report all those reinsurances, save those which exceed the whole sum they have had at risk, is that according to custom and usage prevailing amongst insurance men?

476 A. If they have not reported the reinsurance they have which exceeds what they have on the vessel it would be deception on their part and would be considered a fraud if they did it knowingly.

Q. If they had received advices they did it knowingly?

A. Yes, sir.

Q. And if they had a final report they did it knowingly?

A. Yes, sir; certainly they knew what they were doing.

Q. Now, with respect to usual lines; when a company says it keeps its usual line it means its usual line on a proper vessel?

A. Yes, sir.

Q. No company has a line on a low-grade vessel?

A. Yes, sir; a lower line.

Q. The line depends on the standing of the vessel?

A. Yes, sir; we have different classes of vessels.

Recross-examination by Mr. SABOURIN:

Q. In the case submitted to you by counsel for complainants just now I presume that if a company wholly misunderstood the laws of insurance you could not call that fraud?

A. That would depend upon the mind of the reinsurance companies a great deal as to whether they thought it was fraud or not or only look upon it as a mistake, and it would depend on the com-

pany. If it was an old[illegible]ger like the Atlantic I would consider it fraud.

Q. Suppose the usages of the Northern ports and their laws justified it?

A. I have only to say this: I have reinsured a great deal
477 in England when I was with the New Orleans Ins. Co. and had cable facilities. I use to then reinsure the whole cargo when a vessel was behind time—overdue—but I always stated to the company reinsuring me the reason for reinsuring the whole cargo, and I use to pay from 25 to 50 per cent., and that company reinsuring me would also reinsure and, of course, had to give its reasons for reinsuring me for the whole amount.

Q. You were speaking of extreme cases where you apprehended a total loss and where you paid an unusual and very large premium.

A. That makes no difference. It is the same in all cases. The company reinsuring the whole amount has to give the reasons for doing so.

Q. Suppose that the total reinsurance is done unknowingly?

A. It can never be done unknowingly because the company has to keep its usual line and knows what it is and insures only the excess.

Re-redirect examination by Mr. SANSUM:

Q. I suppose you find that the line you carried between here and Liverpool on any vessel is the usual line, and you ascertain from any cause whatsoever that there is some apprehension about the vessel; for example, she is overdue. Then you reinsure the whole risk and take it off your hands, but in so doing you always state to the company reinsuring you the reasons for your reinsuring the whole risk?

A. Yes, sir; certainly.

Q. When it is stated in a contract that you are to carry a usual line of, say, $10,000, would that line of $10,000 apply to
478 vessels below the standard?

A. It is usual in reinsuring contracts to state the lines thus: $10,000 on "A No. 1," $9,000 on a lower grade, &c., but if only one line is stated that line applies to all vessels.

JUNE 19TH, 1885.

JAMES PREVOST recalled:

Q. Will you state how much money was paid defendants on the claim for loss by Adam M. Simpson?

A. $5,000, April 28th, 1884.

Q. By check?

A. Yes, sir. (Witness produces check.)

*Offer* check marked K 1 offered in evidence.

479 *Documents and Writings Offered by Complainants as per Master's Certificate.*

A[1]. Filed March 12th, 1885.

Copy.

OCTOBER 6TH, 1880.

Chas. Platt, Jr., Esq., Philadelphia.

DEAR SIR: Our Mr. Smith has returned home and begs to refer to his conversation with you in regard to reinsuring here the excess lines of the North America.

We have consulted with the officers of the Hibernia Ins. Co., "a branch of which company is under our management," and we propose to take a proportion of the general reinsurance of the North A., excepting coastwise risks from New York here, of which business, at the present rates, we believe the N. A. does little.

The Hibernia will carry a line of $10,000 on all foreign business of the company at all ports excepting New Orleans. From
480 New Orleans the line must be limited to $5,000, as the Hibernia often have a line from their customers, and they may unknowingly double on a vessel. The Hibernia will allow 25% rebate, and to you a brokerage of 5%.

Should you be able to arrange this please notify us at once. The Hibernia Ins. Co. has a capital of $400,000 paid up, is conservative, and we look upon it here as in every way first class for the amount of risk they will assume.

Y'rs truly, M. J. S. & Co.

A[2]. Filed March 12th, '85.

Charles Platt, Jr., insurance, 331 Walnut street, Philadelphia.

PHILADELPHIA, *Oct. 11th*, 1880.

Marshall J. Smith, Esq., New Orleans.

DEAR SIR: Your valued favor of the 6th inst. is received and I note contents with care.

The Ins. Co. of No. America, through me, will be glad to
481 enter into the reinsurance arrangement with the "Hibernia" on the terms named. I enclose herewith a policy I had with the "Home" Ins. Co. of Newark, N. J., which you can take a copy of on a "Hibernia" policy, making the sum insured $10,000. Please send me the policy and I can begin at once. Of course all risks accepted by me will be such that the Ins. Co. of N. A. carries their line on, and all risks that are bound by me will be held by the Co., as it will not do to have any cancellations. Shall I report all risks to you or the "Hibernia" Co. direct? I see no reason why the arrangement should not prove a success and I will do all I can to make it

so. The most part of it will be grain and general cargo from Atlantic ports to Europe. Please return the home policy.

With many thanks and regards from Mr. Prictet and myself, I am,

Yours very truly, CHARLES PLATT, JR.

482 $A^3$. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 331 Walnut street, Philadelphia.

PHILADELPHIA, *Aug. 26th*, 1882.

Marshall J. Smith & Co., New Orleans.

DEAR SIRS: I desire to know whether the "Hibernia" will issue through me the same as the policies they now have on open policy for $15,000 or $20,000, covering the Ins. Co. of N. A.'s excess over $10,000, on cotton, as per application enclosed. The North America will except the fire risks on shore, they procuring fire reinsurance for that and charging the marine reinsuring Co's a small premium. The rates, as you know, are to be net this year, so the only rebate would be 5% to No. America to cover agent's commission and 5% to me after that. I can do a large business, as we would have a
483 share of almost every risks of the No. Am. Please advise me by return mail if you will issue the pol. & for how much, and I will send the application.

Yours very truly, CHAS. PLATT, JR.

$A^4$. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 303 Walnut street, Philadelphia.

PHILADELPHIA, *March 7th*, 1883.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIRS: Your favor of 2nd inst. at hand and noticed. Hibernia open policy with Ins. Co. of No. Am. gives permission for them to reduce their lines below $70,000 at their discretion, but they are not obliged to notify the Co's reinsuring them of such reductions. I have no facilities for reducing the lines of the Hibernia, and besides Ins. Co. of No. Am. will not tell me when they
484 will reduce. The Hibernia, from their knowledge of the vessels, should, it seems to me, reduce the lines themselves when necessary.

Yours very truly, CHAS. PLATT, JR.

*Letter Referred to in $A^4$.*

(Copy.)

MARCH 2ND, 1883.

Chas. Platt, Jr., Esq., Philadelphia.

DEAR SIR: In looking over the statements of loss sent by you the Hibernia Ins. Co. find that on several of the risks upon which they

were called to pay a loss the North America's line was below the amount stated in the policy (say $70,000). The Hibernia Ins. Co. desires that whenever the N. A. for some reasons elect to reduce their lines that you should reduce the line reinsured by them in the same proportion. Kindly give this matter your consideration and much oblige,

Yours truly,
(Signed) MARSHALL J. SMITH & CO.

485 A[5]. Filed March 12th, 1885.

Charles Platt, Jr., 401 Walnut street, Philadelphia.

PHILADELPHIA, *June 18th*, 1883.

Marshall J. Smith & Co., New Orleans.

DEAR SIR: Your favor of 15th inst. at hand and noted.

The Ins. Co. of N. A. agreed to reduce the lines, per "Jonathan Barrone" and "Sarah Hiquite," to $5,000, as requested by the Hibernia, and I so wired you on 15th inst. I will have policies Nos. 296, 297, 268, and 306 reduced to $5,000 from July 1st next, as requested by yours of 9th inst.

Please return the voucher for Mobile Mutual sent with your ac. in error. The "Matchless," from Iliola, on which probable line was reported, M'ch 19th, has been reported abandoned at sea. North America has $130,000, and I regret exceedingly to say that Hibernia will have a full line, $10,000. She was a first-class American vessel.

486 Yours truly, CHAS. PLATT, JR.

A[6]. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *Oct. 6th*, 1883.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIRS: Your favor of 2nd inst. at hand and noted. Do you mean the reduction of lines reinsured to apply also to the cotton policy? I understand from your former letter that the cotton policy would be continued the same as last year, and so advised the North America. The N. A. are opposed to reducing the lines below $5,000, and I hope you can arrange with the Hibernia to let the lines stand at that amount at any rate for a few months. They will do just as well writing $5,000 as $2,500.

Your favor of 3rd inst., with inclosure as stated, at hand
487 just now. I have paid the loss per "Matchless," and hand you the N. A.'s receipt herewith.

Yours truly, CHARLES PLATT, JR.

A⁷. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *Nov. 20th*, 1883.

Marshall J. Smith & Co., New Orleans.

DEAR SIRS: Your favor of 16th inst. asking the reduction of the lines on "Importer" and "Batavia" to $5,000 was duly rec'd. The reduction to $5,000 was to take effect July 1st last, but not to affect any risk then pending.

The probable lines were both reported in May last, the 26th and 4th, respectively, and of course both came under the old arrangement.

The Ins. Co. of N. A. are not willing to reduce the lines at this late hour, nor *I* can I procure reinsurance, as the vessels sailed
488 from Manila Sept. 12th and Aug. 29th, respectively. I would be glad to reduce the lines if I could. I cannot, and think it hardly reasonable for the Hibernia to ask it. Since July 1st I have not given them any lines exceeding $5,000 and do not intend to.

Yours truly, CHARLES PLATT, JR.

A⁸. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *Nov. 23d*, 1883.

Marshall J. Smith & Co., New Orleans.

DEAR SIRS: Your favor of 19th inst. at hand this a. m., and I have carefully noted contents.

I enclose a letter from Ins. Co. of N. A. as to losses per "Adele" and "Arthur C. Wade," which explain themselves and which explanations I hope will be entirely satisfactory. I have given notice to Ins. Co. of N. A. that the Hibernia desires to cancel their
489 open policies in accordance with their terms from this date, and I will accept no new business from to-day.

I am sorry this decision has been arrived at by the Hibernia, but as they have been on the edge of it for so long I am hardly surprised. I am doubly sorry that the pleasant relations between your firm and myself are about to close, and trust at some future time they can be re-established.

Yours truly, CHARLES PLATT, JR.

A⁹. Filed March 12th, 1885.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *Dec. 6th*, 1883.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIR-: Your favor of 30th Nov. duly rec'd and contents have been carefully noted.

The Hibernia's open pol. with North America on the risks
490 in question attached as now as the probable lines were given in May; in fact, they attached as now as the North America was bound, whether or not probable line was reported.

The order to reduce to $5,000 was not given until June and did not take effect till July 1st. I am sorry the Hibernia is not satisfied. They are already bound for $10,000 on their risks by the terms and conditions of the pol., and at this late day I cannot see that anything can be done. They certainly cannot expect the Ins. Co. of N. A. to reduce them now. I have submitted the case, as requested, to my father, pres't N. A., and this is the view he takes of it. If he or I could see any way to help the Hibernia out in this case we would be glad to do it.

Yours truly, CHARLES PLATT, Jr.

P. S.—Please remit for "Adele" and "Arthur C. Wade" losses.

491 A[10]. Filed March 12th, 1885.

Middle department, Washington Fire and Marine Insurance Co. of Boston, Post and McCurdy, managers, No. 32 Liberty street, New York; Chas. Platt, Jr., agent, 401 Walnut street.

PHILADELPHIA, *Jan'y 5th*, 1884.

Marshall J. Smith & Co., New Orleans.

DEAR SIRS: I regret to have to send the Hibernia a New Year's gift in the shape of the enclosed bill rec'd from the Ins. Co. of North America for $5,000, total los- per b'k "Etimologia," from Phila. to U. K. or Cont., insured under o. p. # 268, certificate # 1186.

Kindly remit as soon as possible, as the N. A. desires to close the matter up.

Yours truly, CHARLES PLATT, Jr.

492 A[11]. Filed March 12, '85.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *Jan'y 23d*, 1884.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIRS: Your favor of 19th inst., enclosing Hibernia cheque for $5,000 in settlement of los- per "Etimologia," rec'd. I have paid the loss and hand you receipt herewith.

The line retained by Ins. Co. of N. A. on this vessel was $35,500. I will answer your questions as to the other vessels mentioned as soon as I can get the information; probably to-morrow.

Yours truly, CHAS. PLATT, Jr.

A[12]. Filed March 12th, '85.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

493 PHILADELPHIA, *Jan'y 26th*, 1884.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIR-: In reply to the latter part of your favor of 19th inst., I send you lines retained by Ins. Co. of N. A. on vessels asked for as follows: $50,000 on each one, except the ship "Elizabeth Nicholson," on which they retain $40,000.

Yours truly, CHAS. PLATT, JR.

A[13]. Filed March 12th, 1885.

Charles Platt, insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *April 25th*, 1884.

Marshall J. Smith & Co., New Orleans.

DEAR SIR-: Your favor of 19th at hand and noted.

494 I retained the balance due the Hibernia, $100.91, at the request of Ins. Co. of N. A., to pay these small losses of a few dollars each as they are presented. They (the N. A.) have again requested me to retain this money, and I shall have to do so unless the Hibernia insists on having it. Since sending the ac. I have paid these small claims, aggregating $588. I enclose herewith a bill rec'd from Ins. Co. of N. A., amounting to $229.24, P. L., per "H. J. Johnson," No. 1253. Please send cheques to pay claims on "Adam M. Simpson," $5,000, & Northern Light, $2.525.95. Bills in both cases have been sent you and payment is overdue.

Yours truly, CHAS. PLATT, JR.

A[13] Bis. Filed March 12, '85.

Ans. 11.

Charles Platt, Jr., insurance, 331 Walnut street, Philadelphia.

PHILADELPHIA, *Sept. 8th*, 1882.

Mess. Marshall J. Smith & Co., New Orleans, La.

495 GENTLEMEN: Your favor of Aug. 28th & Sept. 4th duly received and noted. In reply to the first I send you application for the cotton policy in "Hibernia," $10,000 on "North America's" excess of $70,000, signed by Wm. A. Platt, 2nd V. P. You now return this application with the letter of Sept. 4th, to have it altered to conform to your ideas as expressed in said letter. The Ins. Co. of North America have but one way of placing their cotton insurance, and that is according to the application I sent you, and all the excess reinsurance they want is now placed concurrent with that form. It would be impossible to give the "Hibernia" a policy

different from the rest, nor would the "North America" be willing to place the reinsurance in the way you suggest, as it would create too much confusion in their books. Can you not arrange with some other New Orleans Co. to take part of the "Hibernia" lines as reinsurance? I can report the vessels on which the company will probably have lines as soon as they are received by the "North America," and those from New Orleans you will know already. I cannot
496 have the application fixed in any other way and return it as originally made out. Please have policy made as soon as possible and send it on. The commission arrangement as mentioned in your letter of Aug. 28th agrees with my understanding of it. The cotton policy will in no way conflict with any other policy I have with the "Hibernia." Your Mr. Roux has not called on me as yet, but I still hope to see him before he goes South.

Hoping that the cotton policy can be arranged with "Hibernia" according to the application enclosed, I am,

Truly yours, CHAS. PLATT, JR.

*Enclosure.*

A[14]. Filed March 12th, 1882.

AUG. 28TH, 1882.

Chas. Platt, Jr., Esq., Philadelphia.

DEAR SIR: Your favor of 26 inst. to hand and contents
497 duly noted. We have consulted with the officers of the Hibernia Ins. Co., and they state that they would be willing to issue a policy for $10,000, as you desire, provided it will not interfere with the policies you now hold from them.

In other words, they must never have over $10,000 on any one vessel (or the business that passes through your office you can arrange that, and telegraph if their lines should be doubled).

They agree to take net rates, allowing the company 5% on the rates and you 5% on the net rate, less the 5%—that is to say, the net rate, say, is ¾, 5% off, $71.25. Your commission, 5%, on this would be 3.56. This is their understanding. In case the North America curtails it- line below $70,000 the Hibernia wants you to reduce the line for them in proportion, as near as you can, for they properly think that if the North America cannot carry $70,000 they cannot carry $10,000. If the above arrangements should
498 prove satisfactory you can have application for $10,000 made out as per form sent on to us (which we enclose) and we will do the needful.

Yours truly, ——— ———.

A[15]. Filed March 12th, 1885.

Copy.

JUNE 9TH, 1883.

Chas. Platt, Jr., Esq., Philadelphia.

DEAR SIR: The Hibernia request you to notify the Ins. Co. of

North America that from and after the 1st July next the lines covered by their policies, # 296, 297, 268, and 306, will be reduced to $5,000.

The company, in view of the unprofitable results of the business, think it advisable to reduce the lines.

There are on file a number of application- of very old standing; some, indeed, have arrived at their port of destination.

Kindly see whether you could not complete the applica-
499 tions and oblige,

Yours truly, M. J. S. & CO.

A[16]. Filed March 12th, 1885.

SEPT. 4TH, 1882.

Chas. Platt, Jr., Esq.

DEAR SIR: The application of the North America for the Hibernia came to hand this morning. We return the same as the Hibernia wants it fixed, so that they will carry ½th as much as the N. Am. The N. Am. will carry as much as $70,000 on a first-class steamer & the Hibernia $10,000, so that when the N. A. reduce their line the Hibernia reduces in proportion, carrying one-seventh the N. A.'s line; also that this policy must not conflict with those already issued. It is possible that we could get one other of our good companies to join this arrangement.

Our Mr. Roux has, we presume, been with you before this;
500 if so, we trust you have talked this matter over. He may (if he has already been with you) return via Philadelphia.

Yours truly, —— ——.

A[17]. Filed March 12th, '85.

SEPT. 15, '82.

Chas. Platt, Jr., Esq., Philadelphia.

DEAR SIR: Yours of the 12th inst., with claim against the Hibernia Ins. Co. for $3,521.37, to hand, & we have handed them the claim. We had hoped they would get a little ahead, but it looks otherwise. We wish you could let us know these risks sooner, & we could reinsure the Hibernia. They are talking about reducing their line, but we will try and avoid that by reinsuring in some other Co. if we can. We send you the policy on cotton for them, & we shall hope to have reports from you promptly, so that we can reinsure them if need be. We beg to call your attention to the fact that we have received returns from you some months after the vessel
501 has arrived & reporting no interest for the Hibernia. Now, we know this is correct, but it is unpleasant and can be avoided. How unpleasant it would be for a vessel's loss to be reported before we had returns. We have asked in other transactions to have this corrected at the home office, & have them promise to do so, but we trust that you are the sport interested, as we are; will look to this. For example, the Rob't Porter application, dated 4th M'ch, arrived June 2; ret'd to-day; no interest.

Please attend to this, as it is not pleasant to have to explain to the Hibernia.

M. J. SMITH & CO.

A[18]. Filed March 12, '85.

JUNE 9TH, '83.

Chas. Platt, Jr., Esq., Philadelphia:

The Hibernia requests you to notify the Ins. Co. of North America that from and after the 1st July next the lines covered by their policies, Nos. 296, 297, 268, and 306, will be reduced to $5,000. The company, in view of the unprofitable results of the business,
502 think it advisable to reduce the lines. There are on file a number of applications of very old standing; some, indeed, have arrived at their port of destination. Kindly see whether you could not complete the applications, and oblige,

Yours truly, —— ——.

A[19]. Filed March 12, '85.

Charles Platt, Jr., insurance, 303 Walnut street, Philadelphia.

PHILADELPHIA, *Sept. 14th*, 1882.

Messrs. Marshall J. Smith & Co., New Orleans, La.

GENTLEMEN: Your favor of the 11th inst. at hand and noted. If the "Hibernia" wishes to reduce their lines to $1,500 by reinsurance they certainly should attend to that themselves. Neither you nor I should be made to lose the commissions on the excess of $1,500, and I for one cannot consent to such an arrangement. I
503 most surely do not wish or expect you to lose anything.

Yours very truly, CHAS. PLATT, JR.

A[20]. Filed March 12, '85.

Charles Platt, Jr., insurance, 401 Walnut street, Philadelphia.

PHILADELPHIA, *June 20th*, 1883.

Marshall J. Smith & Co., New Orleans, La.

DEAR SIR: I hand you herewith an endorsement to be signed by the pres't or sec'y of the Hibernia Ins. Co. and to be attached to policy No. 296, covering Ins. Co. of N. A. from the East Indies. The North America requests this in order to make all the policies reinsuring them concurrent.

Please have the endorsement signed and returned to me and I will attach it to the policy.

Yours very truly, CHAS. PLATT, JR.

504 A[21]. Filed March 12, '85.

Charles Platt, Jr., insurance, Walnut street, Philadelphia.

PHILADELPHIA, *Sept. 7th*, 1883.

Marshall J. Smith & Co., New Orleans.

DEAR SIRS: I beg to hand you herewith bill to Hibernia Ins. Co., rec'd from Ins. Co. of North America, for $9,906.67, being for total loss per Am. ship "Matchless," with 56 days' interest, insured under open pol. # 296, certificate # 1085. Please ask Hibernia to send draft as soon as possible, as the N. A. has paid and desires to close the matter up. I regret very much to send this, but can see no way out of it.

Yours truly, CHAS. PLATT, JR.

B[1]. Filed March 12, '85.

PHILADELPHIA, —— —, 18—.

505 Reinsurance is wanted by the Insurance Company of North America for $—— on —— on board of the ——, at and from —— — ——; to apply to the excess which the said company may have on all their various policies on vessel, freight, cargo, or profits, including specie or treasure, over $——, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed $——.

This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time.

☞To remain open until particulars are given in.

Premium, —— per cent., less —— per cent., $——.

When and where built, ——; number of decks, ——, tonnage, ——; rate, ——.

—— ——, *Secretary.*

To the —— ——.

506 B[2]. Filed March 12th, 1885.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. ——, for Insurance Company of North America, payable, in case of loss, to them, for $—— upon —— on board ——, at and from —— to ——.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.

Premium, —— per cent., $——.

Philadelphia, —— —, 188–.

CHAS. PLATT, JR.

B[3]. Filed March 12, 1885.

Reinsurance is wanted by the Phenix Insurance Company, for account of themselves, loss, if any, payable, in funds current
507 in the city of New York, to —— ——, for $—— on —— on board the ——, —— ——, master, and to be insured at and from —— to ——.

This reinsurance is to apply to the excess which the Phenix Insurance Company may have on vessel, freight, cargo, or profits over the sum of $——; but it is understood that the amount covered hereby is applicable to cargo only.

This policy is to be subject to such risks, valuations, and conditions as are or may be taken by the said Phenix Insurance Company, and payment of loss to be made at the same time.

In case of error in describing the interest intended to be applied to this policy, such error — to be corrected so as to make the reassurance to apply to any other sums not reinsured to the same extent.

Binding— —— ——, *Pres't.*
" —— ——, *Applicant.*

New York, —— —, 18—.

B[6]. Filed M'ch 12, '85.

Endorsed on back: 4, 8, '82. Hibernia Ins. Co. S. S. Peruvian.

508 PHILADELPHIA, *April 8th*, 1882.

Reinsurance is wanted by the Insurance Company of North America for $—— on mdse. on board of the S. S. "Peruvian," Portland to Liverpool; to apply to the excess which the said company may have on all their various policies on vessel, freight, cargo, or profits, including specie or treasure, over $30,000, and to apply *pro rata* with all reinsurance policies on same excess, but not to exceed $10,000.

This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time.

☞To remain open until particulars are given in.

Premium, ½ per cent., less 20 & 5 per cent., $——.

When and where built, ——; number of decks, ——; tonnage, ——; rate, ——.

W. A. P., *2nd V. P.*

To the Hibernia Ins. Co.

509 (The following is attached to B[6]:)

807

Insurance Company of North America, No. 232 Walnut street, Philadelphia.

To the Hibernia Ins. Co.:

Particulars of insurance.

Original application, dated Ap'l 8th, 1882, made by —— —— on board the S. S. "Peruvian," at and from Portland to Liverpool, on mdse., $——, no excess; $——, less ——.

Bill of lading dated ——; time of sailing, ——.

Philadelphia, May 17th, 1882.

WM. A. PLATT, 2 *V. P.*

X[1]. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. 1. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $10,000 upon
510 sugar, being excess over $25,000, on board ship Obi, at and from port or ports in the Philippine Islands to Boston, direct port.

When built, '64; where built, Y.; metaled, and special survey, 1880; tonnage, 1,012.

Remarks, ——; rate, $3\frac{3}{4}$, $\frac{5}{6}$, I. 7, 1.

Premium, $3\frac{3}{4}$ per cent., $——.

Philadelphia, June 11th, 1881.

CHAS. PLATT, Jr.,
By A. P.

The following is attached to X[1]:

Certificate No. 268 B.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of June 11th, 1881, under open policy No. 268, on sugar, per ship "Obi," is $10,000 @ $3\frac{3}{4}$ per cent.: premium, $375; net, $255.

Philadelphia, Nov. 22d, 1881.

CHAS. PLATT, Jr.,
By A. P.

The following is attached to X[1]:

$\frac{1}{4}$% additional premium for using "Sidney" certificate 678[2].

To the Hibernia Insurance Company of N. O.:

The amount attaching on completion entry of Sept. 20th,
511 1882, under open policy No. 268 on wheat, fi. p. a., E. C., per S. S. Silverdale, — $10,000 @ ¼ per cent.; premium, $25; N. Orleans via Sidney to Bordeaux.
1700.
Philadelphia, Sept. 29th, 1882.

CHAS. PLATT, Jr.,
By A. P.
1782.

X². 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $—— upon cargo, excess over $25,000 not to exceed $5,000, on board S. S. Avlona, at and from Mediterranean ports to Montreal.
When built, ——; where built, ——; metaled, ——; tonnage, ——.
Remarks, —— ; rate, ——.
Premium, —— per cent., $——.
Philadelphia, Oct. 18th, 1881.

CHAS. PLATT, Jr.,
By A. P.

512 The following is attached to X²:

Certificate No. 289.

To the Hibernia Insurance Company of N. O.:

The amount attaching, on open entry of Oct. 18th, 1881, under open policy No. 268, on cargo per S. S. Avlona, is $5,000 @ 2 per cent.; premium, $100; net, $68.
Philadelphia, Dec. 21st, 1881.

CHAS. PLATT, Jr.,
By A. P.

X³. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $10,000, upon mdse.

on board b'k L. E. Cunn, at and from Telacutta, via Vera Cruz, to New York.

Rate, open.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.

513 Premium, —— per cent., $——.

Philadelphia, M'ch 18th, 1882.

CHAS. PLATT, JR.,
By A. P.

The following — attached to $X^3$:

Certificate No. 399.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of M'ch 18th, 1882, under open policy No. 268, on mdse. per b'k L. E. Cunn, is $10,000 @ 3 per cent.; premium, $300; net, $204.

Philadelphia, Ap'l 11th, 1882.

CHAS. PLATT, JR.,
By A. P.

$X^4$. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. —, for Insurance Company of North America, payable, in case of loss, to them, for $5,000, upon

514 mdse. on board b'k Yorkshire, at and from Barbadoes to Montreal.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.

Premium, —— per cent., $——.

Philadelphia, June 28th, 1882.

CHAS. PLATT, JR.,
By A. P.

The following — attached to $X^4$:

Certificate No. 562.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of June 28th, 1882, under open policy No. 268, on mdse. per b'k Yorkshire, is $5,000 at 2½ per cent.; premium, $125; net, $85.

Philadelphia, June 29th, 1882,

CHAS. PLATT, JR.,
By A. P.

X⁵. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Com-
515 pany of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $——, upon wheat, fi. p. a., E. C., excess over $30,000 not to exceed $5,000, on board Rus. b'k "Impi," at and from Philada. to U. K., &c.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.

Premium, 1¾ per cent., $——.

Philadelphia, Aug. 28, 1882.

CHAS. PLATT, JR.,
By A. P.

The following — attached to X⁵:

Certificate 676.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of Aug. 28, 1882, under open policy No. 268, on wheat per b'k "Impi," is $3,563 @ 1¾ per cent.; premium, $62.35.

Philadelphia, Sept. 20, 1882.

CHAS. PLATT, JR.
C. P., JR.

516 X⁶. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. 686. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $5,000 upon mdse. on board Nor. b'g Budstikken, at and from Jamaica to Montreal.

When built, 1881; where built, Norway; metaled, ——; tonnage, 203.

Remarks, ——; rate, ——.

Premium, 2 per cent., $100.

Philadelphia, Sept. 23rd, 1882.

CHAS. PLATT, JR.,
By A. P.

The following — attached to $X^6$:

Certificate No. $686^2$.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of Sept. 23rd, 1882, under open policy No. 268, on mdse. per b'g Buddstikken, is $5,000 @ ½ per cent.; premium, $25; additional premium, ——.

Philadelphia, Sept. 28th, 1882.

CHAS. PLATT, JR.

517 $X^7$. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. —. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 296, for Insurance Company of North America, payable, in case of loss, to them, for $5,000, upon mdse. on board Ger. b'k Adele, at and from Java to Montreal.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, open; rate, ——.

Premium, —— per cent., $——.

Philadelphia, Feb'y 1, 1883.

CHAS. PLATT, JR.,
By A. P.

The following — attached to $X^7$:

Certificate No. 986.

To the Hibernia Insurance Company of N. O.:

The amount attaching on open entry of Feb. 1st, 1883, under open policy No. 268, on mdse. per Ger. b'k Adele, is $5,000 @ 4 per cent.; premium, $200; Isl. Java to Montreal.

Philadelphia, April 27th, 1883.

CHAS. PLATT, JR.,
By A. P.

518 $X^8$. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. 863. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $5,000, upon mdse. on board b'k Ocean, at and from Trieste to New York.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.
Premium, 5 per cent., $250.
Philadelphia, Jan'y 6th, 1883.

CHAS. PLATT, Jr.,
By A. P.

X[9]. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. 864. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 297, for Insurance Company of
519 North America, payable, in case of loss, to them, for $1,428 upon mdse. on board b'k Skerryvore, at and from Havana to Boston.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.
Premium, 1½ per cent., $21.42.
Philadelphia, Jan'y 7th, 1883.

CHAS. PLATT, Jr.,
By A. P.

X[10]. 4, 15, '85.

Office of Charles Platt, Jr., Philadelphia.

Certificate No. 1186. No. —.

Insurance has been made in the Hibernia Insurance Company of N. O., under open policy No. 268, for Insurance Company of North America, payable, in case of loss, to them, for $5,000, upon wheat, fi. p. a., E. C., on board b'k Etimologia, at and from Philada. to United Kingdom, Cont., &c.

When built, ——; where built, ——; metaled, ——; tonnage, ——.

Remarks, ——; rate, ——.
Premium, 2¾ per cent., $137.50.
520 Philadelphia, Oct. 23rd, 1883.

CHAS. PLATT, Jr.,
By A. P.

X[11]. 4, 15, '85.

Insurance Company of North America, 232 Walnut street.

PHILADELPHIA, *November* 23*rd*, 1883.

Messrs. M. J. Smith & Co., New Orleans, La.

DEAR SIRS: We have been requested by Mr. Charles Platt, Jr., to give you all the information possible in the case of bark "Adele," reinsurance claims for which were sent out some few days since. The risk was accepted by us on the 15th of January, 1883, for the St. Lawrence Sugar-Refining Company, and the probable amount given was $114 M, and the information was volunteered at the same time that the amount would probably be rather over than under this figure. As we are not in the habit of carrying larger lines than $15 M or 20 M on such cargoes to Montreal, we at once busied
521 ourselves to obtain the required reinsurance, and, feeling assured that the line would be as stated above, we thought it best to place the most of it flat and not upon excess. After much trouble the writer succeeded in obtaining $61,500 reinsurance, $56,500 of which was through our agent in Montreal and $5 M with *good*-selves. On the 15th of February, through the Maritime Exchange of this city, we were notified that the bark "Adele" had stranded near Batavia, and soon after we were advised that the loss would not prove serious, and that the vessel had on board only about 488 tons of sugar, as she had not yet called at the second port of loading, where she intended taking on the balance of the cargo. On the 3rd day of March notice was sent to us that the bark had floated, after discharging her cargo into lighters, and that the vessel was tight and making no water. The above reinsurance, being placed flat, covered the whole amount of the sugar on board between Batavia and her second port, which was Pecalongan. On the 7th of
522 August she loaded at this latter port 1,463 baskets of sugar, worth $42,869, which was also reported, under our policy, by the refining company. We then endeavored to obtain further reinsurance, and finally succeeded in leaving our net line $28 M, which we carried to Montreal. This explains the whole circumstance and, we trust, will serve your purpose. We beg to say, in addition, that settlement has been made by all the other companies reinsuring us.

In regard to the "Arthur C. Wade," the net loss to this company was $50 M, that being the line retained. We have paid the loss and would say that the recovery of the amount from the S. S. is almost certain, as there is no question in the mind of any one that the latter was in fault. We will keep you advised from time to time as to the prospect of recovery.

We regret your desire to close the relations which have for so long a time existed between the Hibernia and ourselves.

Yours truly, WM. A. PLATT, 2 *Vice-P't.*

| | Vessel. | From— | To— | Date of orig. order. | Date of particulars. | Excess re-in-ured. | Amount retained. | Amount reinsured. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|
| 111.24 | J. W., 21, 11124 | Pernambuco | Boston | Mar. 6, '82 | April 18, '82 | 20,000 | 20,000 | 38,429 | |
| 2349.32 | Maggie Horton | Havana, 350 | New York | Feb'y 10, '82 | M'ch 1, '82 | 50,000 | 49,995 | 16,860 | |
| | Avlona | Mediterranean | Montreal | Oct. 18, '81 | Dec. 21, '81 | 25,000 | 39,582 | 40,000 | |
| | Yorkshire | Barbadoes | " | June 27, '82 | June 29, '82 | 12,500 | 14,417 | 39,101 | |
| | Obi | Iloilo | Boston | June 6, '81 | Nov. 25, '81 | 25,000 | 25,000 | 19,999 | |
| 542 | E. A. Sanchez | Havana | do. | Flat. | Sept. 22, 82 | 50,000 | 50,000 | 8,680 | |
| 1.64 | Lizzie H. | Singapore | do. | June 25, '82 | Nov. 1, '82 | 50,000 | 50,000 | 3,116 | |
| 4288 45 | Buddstikken | Jamaica | Montreal | Flat. | Sept. 23, '82 | Flat. | | | Reinsurance was placed with the expectation of a large line & this company intended to keep $20,000, but when particulars were reported we found that we would have no line whatever, as we had to reinsure it all. |
| 34.10 | Tonawanda | Mobile | Liverpool | do. | June 27, '82 | " | 18,900 | 10,000 | |
| 50.36 | Canonbury | Montreal | London | do. | July 22, '82 | " | 5,000 | 5,000 | |
| 6.85 | Melmerly | New Orleans | Liverpool | do. | July 18, '82 | 20,000 | 22,090 | 25,000 | |
| | Skerryvore | Havana | Boston | do. | Jan'y 6, '83 | 30,000 | 30,000 | 28,569 | |
| | Ocean | Trieste | New York | do. | Jan'y 6, '83 | Flat. | 16,367 | 8,000 | |
| 3648 | J. D. Robinson | Matanzas | do. | Feb'y 17, '83 | M'ch 1, '83 | 50,000 | 50,000 | 1,630 | |
| 2448 | Helen Sands | Havana & Sagua | U. S. | Feb'y 20, '83 | Ap'l 9, '83 | 40,000 | 40,000 | 26,980 | |
| 83.38 | Oranmore | Baltimore | Liverpool | M'ch 13, '83 | Mar. 28, '83 | 60,000 | 60,089 | 26,000 | |
| 20.87 | General Roberts | Cienfuegos | Boston | May 22, '83 | June 4, '83 | 50,000 | 50,000 | 13,419 | |
| 527.60 | Peruvian | Montreal | Liverpool | Nov. 20, '82 | Nov. 29, '82 | Flat. | 22,120 | 5,000 | |
| 170.26 | Tangier | Philada | Limerick | Flat. | Jan'y 25, '83 | " | 40,000 | 19,500 | |
| 459.11 | Impi | " | U. K. or Cont. | Aug. 28, '82 | Sept. 19, '82 | 30,000 | 30,000 | 10,690 | |
| 10,000 | Matchless | Iloilo | N. Y. or Boston | M'ch 19, '83 | Jan'y 26, '83 | 50,000 | 50,000 | 73,488 | |
| 16.55 | Arthur C. Wade | Caibarien | Boston | Aug. 31, '83 | Sept. 17, '83 | 50,000 | 50,000 | 18,206 | About 80 % of this loss will be recovered. |
| | Adele | Java | Montreal | Feb'y 1, '83 | April 27, '84 | Flat. | 10,144 | 81,500 | |
| | Ardenclutha | Calcutta | New York | May 24, '83 | Jan'y 31, '84 | 50,000 | 50,000 | 17,200 | |
| | Adam M. Simpson | Iloilo | N. Y. or Boston | Oct. 16, '83 | M'ch 10, '84 | 50,000 | 50,000 | 41,344 | |

Endorsed on back:

| | |
|---|---|
| Obi | 3,521 37 |
| Budstikken | 4,288 45 |
| Matchless | 10,000 00 |
| Yorkshire | 5,000 00 |
| Adele | 1,692 67 |
| Avlona | 526 35 |
| Skerryvore | 1,428 00 |
| Ocean | 693 43 |
| Empi | 459 11 |
| Peruvian | 327 60 |
| | $27,936 98 |

527 C. 5, 7, '85.

*Insurance Co. of North America of Phila. for Premiums on Notices of Insurance to Hibernia Ins. Co., Dr.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Notice—Completion March 20th, '84. | #1259 | B'k Sea Witch | Manila to United States | | 5,000 00 | 2 %; 25 % off | 75 00 |
| | 1260 | " Mary L. Stone | " | do. | 5,000 00 | 2 %; 25 % off | 75 00 |
| | 1261 | " J. D. Brewer | Iloilo | do. | 5,000 00 | 4 ; 25 % | 150 00 |
| | 1262 | " Velard H. Hopkins | " | do. | 5,000 00 | 2 ; 25 % | 75 00 |
| | 1263 | " Bark Bertrand | Pardang | do. | 5,000 00 | 2 ; 25 % | 75 00 |
| M'ch 17 | 1259 | A. M. Simpson | Iloilo | do. | 5,000 00 | 4⅞; 25 % | 182 82 |
| May 13 | 1264 | S. S. Selembria | Manila | do. | 5,000 00 | 2 ; 25 % | 75 00 |
| | | | | | | | 707 82 |
| Am't of salvage bk. Arthur C. Wade acknowledged as per statement furnished— | | | | | | | |
| July 8, '84 | | | | | 733 62 | | |
| Dec. 4, '84 | | | | | 223 95 | | |
| Jan'y 3, '85 | | | | | 223 96 | | 1,181 53 |
| | | | | | | | 1,889 35 |

528 *Complainant-' Check to Order of Respondents.*

Hibernia Insurance Company. Figure. 37 Camp St., New Orleans.

No. 7548. NEW ORLEANS, *April 28th*, 1884.

Hibernia National Bank pay to the order of Insurance Co. of North America, Ph'a, seventy-five hundred & twenty-five $\frac{95}{100}$ dollars.

$7,525.95. JOHN HENDERSON, *President.*
THOS. F. BRAGG, *Secretary.*

[Written across the face in red ink·] D. C., Tr.

For deposit only to the credit of Ins. Co. of North America.

Endorsed on back.

Northern Light ..... 2,525 95
Ada M. Simpson ..... 5,000

$7,525 95

Ribbon stamp of Hibernia Nat. Bank. May 5th, 1884.

Insurance Company North America, per E. H. Kennedy.

MAY 2*nd*, 1884.

Pay A. Lurie, cash., or order for collection and account of the Philada. Nat'l Bank.

J. W. TORREY, *Cashier.*

*Respondents' Letter Dated Feb'y* 14, 1884.

Insurance Company of North America, 232 Walnut street.

PHILADELPHIA, *February 14th*, 1884.

Messrs. M. J. Smith & Co.

529 DEAR SIRS: Your letter of the — inst., with the enclosures, is received.

We hand you herewith a bill for the amount insured by the Hibernia Insurance Company per ship "Adam M. Simpson." We would say that the line retained by this company was $50 M, which is now in process of payment. We enclose an extract containing all the written portion of the protest of the captain, which kindly return. We authorize you to deduct a *pro rata* amount, at the rate of 6 % per annum, for the payment of this loss within 60 days from the date of the bill.

Yours truly, WM. A. PLATT, 2*nd V. P.*

*Respondent-' Letter Dated March 10th*, 1884.

Letter Y. Filed M'ch 13, '85.

Copy.

Insurance Company of North America, 232 Walnut street.

PHILADELPHIA, *March 10th*, 1884.

530 Marshall J. Smith, Esq., New Orleans, La.

DEAR SIR: Your favor of the 6th inst. is received, with the enclosed list of the Hibernia Insurance Company, after examination of which we really do not see that there is much cause for complaint. In the case of the "Obi," where the company had $10 M, our comparatively small line was caused by the fact that the open accounts turned out to be very much less than we had expected. In the case of the "Tonawanda" the $10 M line was retained by special permission, the vessel being known to us a being in all respects good, although old.

The Montreal risks, in recent instances, were taken by Mr. Charles Platt, Jr., direct from Boston, without the intervention of this company and presumably by the consent of the Hibernia. We really cannot find any particular line that we consider very much out of the way. The "Adele" case has already had a full explanation. It was an accident such as does not occur often.

531 The loss of the "Adam M. Simpson" *the loss of the "Adam M. Simpson"* was reported to us by telegraph, and even to this day the final invoices have not been received, though we trust that they will be within a few days. On this vessel our retained line was $50 M, and it was impossible to have a better risk. We regret very much the outturn of this business, but, as you well know, the marine business of the country for the last few years has been disastrous and the misfortunes overtook us al- together. We regret that the "Hibernia" has practically given up the business, as we think that the outlook is very much more favorable. We are in hopes of collecting a large amount from the "Arthur C. Wade" collision case at an early day.

Yours truly,

(Signed) CHARLES PLATT, *Pres.*

I find on examination that the Montreal risks were taken here.

*Stipulation. Filed October 21st*, 1885.

532 C. C. U. S. for the E. D. of Louisiana. In Equity.

HIBERNIA INS. CO., Complainants,

*vs.*

THE INSURANCE CO. OF NORTH AMERICA, Defendants.

The complainants and defendants hereby agree that the depositions taken in this cause in the city of Philadelphia, before the mas-

ter, the Hon. A. G. Brice, shall be read in evidence without the signatures of the witnesses, said signatures being hereby waived.

Philadelphia, March 13th, 1885.

O. B. SANSUM,
*For Compl'ts.*
E. SABOURIN,
*For D'f'ts.*

Copy of a letter dated March 2, '83, by Marshall J. Smith & Co. to Charles Platt, Jr., to which reference is made in letter marked A 4. (See page 484 of this transcript.)

533 *Testimony of Chas. Platt.*

HIBERNIA INSURANCE COMPANY
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

Testimony on behalf of defendants.

FRIDAY, *March 13th*, 1885—at 10 a. m.

Present: The master (Hon. A. G. Brice); Mr. Sansum, representing complainants; Mr. Sabourin, representing defendants.

CHARLES PLATT, having been duly sworn, was examined as follows:

By Mr. SABOURIN:

Q. You are the president of the Insurance Company of North America, the defendants herein?

A. Yes, sir.

Q. Since what date have you occupied such position?

A. I was elected to that position in January, 1878.

Q. What was your position in the company previous to that time?

534 A. I was secretary of the company from 1860 to 1870, and in 1870 I was elected vice-president of the company, and remained in that position until 1878.

Q. During all that time you have been in the employ of that company continuously?

A. From the time I was elected secretary, in 1860, down to the present time I have been continuously in the employ of the company—twenty-five years the 4th of April coming.

Q. Has the Insurance Company of North America ever had any open contracts for reinsurance with the Hibernia Insurance Company? And, if so, please state what they were and how numbered.

A. The Insurance Company of North America had open policies of reinsurance with the Hibernia Insurance Company, being numbers 277, 296, 297, and 306.

Q. Did the Insurance Company of North America ever place any reinsurance outside of these open contracts of reinsurance with the Hibernia?

A. Yes, sir.
Q. In what manner were those placed?
A. Placed through their agent, Charles Platt, Jr.

Mr. Sansum objects to the witness stigmatizing Charles Platt, Jr., as the agent of the Hibernia Insurance Company, because that is a question of law.

535 Q. Whose agent did you consider Charles Platt, Jr., to have been in these transactions?

Objected to, because it is a question for the court to answer and not the witness.

A. The agent of the Hibernia Insurance Company.
Q. Did you know of the existence of a certain policy of the Hibernia issued to and in the hands of Charles Platt, Jr., No. 268, which policy is now exhibited to you for examination?
A. Yes, sir.
Q. Was that policy a reinsurance policy for the North America or intended to be for the North America?

Objected to on the ground that it is a question for the court to answer and not for the witness.

A. No, sir.
Q. Was it ever in your possession or under your control?
A. No, sir; it was not.
Q. Was Charles Platt, Jr., acting as the agent or representative of the Insurance Company of North America when applications for special reinsurance were made through him by your company to the Hibernia?

Objected to on the ground that it is a question for the court and not for the witness to answer.

A. No, sir; in no sense.
Q. Who did he represent?

Objected to on the same ground.

A. The Hibernia Insurance Company.

536 Q. Is Charles Platt, Jr., connected in any manner with the marine business carried on by these defendants, and had he any such connection at any time during the period you had reinsurance dealings with the Hibernia?

(Objected to on the same ground.)

A. He had not.
Q. Through whom was all your business of reinsuring transacted with the Hibernia, either under policy No. 268 or under the open policies, and for what purpose, and how was that business conducted?
A. The business of the Insurance Company of North America, under open policy or under policy 268 was conducted entirely through the medium of Charles Platt, Jr.
Q. For what purpose?

(Objected to on the ground that it is a question for the court to determine and for the court alone.)

A. Our only medium of a communication was the agent of the Hibernia.

Statement of witness objected to.

Q. How was that business conducted?

A. Simply by applications being made out by this company and handed to him.

Q. For reinsurance?

A. For reinsurance.

Q. And how under the open policy?

A. Just the same. The applications were sent in, the probable lines were notified, and amounts given under the open policy
537 and under special policy. They were simply handed to him and made binding by him.

Q. In other words, under open policies you made your reports to the Hibernia through him?

A. Yes, sir; through him.

Q. Your statements of particulars were through him?

A. Yes, sir.

Q. For the Hibernia Company?

A. Yes, sir.

Q. What is your method of reporting when it is usual to report particulars of reinsurance to companies reinsuring you under open policies?

A. When the risk is first received by the company by which it is assured the companies reinsuring under open policies are notified of the probable line under such policies, and at the time of this company receiving the particulars—full particulars, which they deem to be accurate—those particulars are handed to the companies.

Q. Immediately, as soon as possible?

A. As soon as possible; as soon as we deem it safe.

Q. Had your company any interest of any kind whatsoever in policy No. 268?

Objected to, because that is a question of law and not one for the witness to answer.

A. No, sir.

Q. Was it issued at the request of your company for its benefit?

A. No, sir.

538 Q. Had your company any interest in the brokerage or profits accruing from the special reinsurance effected under such policies through Charles Platt, Jr.?

A. No, sir.

Q. The bill of complainants charges substantially that policy No. 268, though issued by the Hibernia Insurance Company nominally to Charles Platt, Jr., was in reality issued to and for the Insurance Company of North America. Please state whether these allegations are true or not.

Objected to on the ground that that is a question for the court to answer and not for the witness.

A. It was not.

Q. Was there anything said or intimated by you, as president, or by the board of directors of your company from which complainants could reasonably believe or infer that policy No. 268 was only nominally issued to Charles Platt, Jr., and that in reality it was issued to the Insurance Company of North America?

Objected to on the same ground.

A. No, sir.

Q. When reinsurance was placed in the Hibernia Company through Charles Platt, Jr., how was it done? Describe the method and form and state whether the form marked B, now exhibited to you, was the one used by you for applications for reinsurance?

A. When special reinsurance was asked for from the Hibernia Insurance Company by the Insurance Company of North America it was asked for on one of two forms; when flat, upon the form marked A, and when on excess on the form marked B.

539 Q. That is the form in general use by insurance companies?

A. Yes, sir.

Q. What is the meaning of the reinsurance clause contained in the application, "Subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and the payment of loss to be made at the same time?"

Objected to on the ground that the witness is asked to construe a written instrument or a part of a written instrument, which is contrary to law.

A. It means that the company which reinsures, in the mere form of acceptance of risks as reinsurance, subjects itself to all such risks, valuations, conditions, and mode of settlement as are or may be adopted by the reinsuring company and notwithstanding anything to the contrary which that reinsuring company may have — its own policy in its printed form. In other words, this clause, "Subject to such risks," overrides the printed part of any company's policy after that reinsurance is accepted. The last clause, "Payment of loss to be made at the same time," means that when the company which has reinsured pays its loss it calls upon the reinsuring companies to respond to its proportion of that loss and expects prompt compliance with the terms of the contract.

Q. What was the general character of the risks placed with the complainants, say since and from 1880?

A. Good.

540 Q. Have the marine risks of your company generally proven profitable during, say, the past five years?

A. That is a somewhat difficult question to answer. The marine business of the whole world has been somewhat demoralized. We

have not made such profits as we used to make, but I may say it has been reasonably profitable.

Q. Have the Montreal risks proven remunerative during the said period of time, and what was the general character of these risks?

A. The Montreal risks have proven, generally, profitable. There have been years when the profit was small, but the general character of the business, owing to the character of the agent who we employ up there, has been very well selected, good business.

Q. What was the general character of your risks taken there?

A. Good.

Q. What about defendants' line of insurance on vessels; has your company any fixed or usual line?

A. No, sir.

Q. Does that line vary frequently?

A. Yes, sir.

Q. Complainants state in their bill that the usual line of insurance kept by your company on vessels is $50,000; is that allegation correct?

A. No, sir.

541 Q. If not, state your method of reinsuring—by what you are guided and the amount of risk you take on any one vessel and whether such amount varies or not.

A. There are a great many questions enter into the amount of the line which the company would be willing to hold. For instance, to illustrate, a vessel that is going to arrive on the coast of America in midwinter, during the months of December, January, and February, we would be apt to carry a lesser line on those than on a vessel going to arrive in the midst of summer; and our lines would be regulated by the nature of the trade, by the season of the year, the character of the assured, and the class of vessel.

Q. Did you or did you not ever reinsure with the Hibernia on lines of risk less than $50,000?

A. Yes, sir; frequently.

Q. Did the Hibernia ever object to such reinsurances on the ground that they were on lines less than $50,000?

A. Never.

Q. Did they accept and keep the premiums paid to them under such reinsurances?

A. Yes, sir.

Q. Without any objection?

A. Yes, sir.

Q. Are there lines of steamers or ships on which you never reinsure? If so, please mention them, or some of them.

A. Yes, sir; there are lines of steamers, such as the Cunard,

542 White Star line, National, and some others, which we rarely, if ever, reinsure unless the line should be something very excessive. I mean by excessive, for instance, Drexel & Co. might apply for $250,000 specie by the Cunard. For the small premium paid, we could not keep $250,000 of specie. My general answer to the question is, yes, there are lines upon which we do not reinsure.

Q. Was there anything agreed to, or said, or understood, or inti-

mated, at any time between the Hibernia or its agents, especially Charles Platt, Jr., and Marshall J. Smith & Co., and the Insurance Company of North America or its authorized agents to the effect that these defendants should never carry a line of risk less than $50,000 or $60,000 or $70,000, as the case might be?

Objected to on the ground that it is a question for the court to answer and not for the witness.

A. No, sir.

Q. Could complainants reasonably so believe and infer from any custom or act or saying or agreement of these defendants?

Objected to on the same ground.

A. No, sir.

Q. Did your company at any time undertake, for the sake of obtaining reinsurance with the Hibernia, to carry as its usual lines of risk not less than $50,000, $60,000, or $70,000, as the case might be?

Objected to on the same ground.

543 A. No, sir.

Q. As a general rule, did the North America Company carry their usual line on all these risks reinsured with complainants?

A. Yes, sir.

Q. Were there any exceptions? And if there be any, state them.

A. I do not understand that question.

Q. Were there cases in which you did not carry the usual line of reinsurance?

A. Yes, sir; there are cases mentioned in the complainants' bill; the case of the "Budstikken" and the time of a loss occurring on the "Adele."

Q. Can you explain this matter?

A. I can, perfectly.

Q. Please do so.

A. It was, I should say, an entirely accidental thing. It was the intention of the company to have carried its line on the Budstikken; but owing to the facts—(I suppose the details have been given. I would not like to bind myself down to any particular figure just now)—but owing to the fact that the reinsurance was effected upon an amount which was reported open and which was afterwards closed at a very much less figure, the reinsurance policies practically absorb the whole insurance. Certainly personally I would not have wished it, and I remember making the remark that I not
544 only regretted that it had happened but that I would not have such a thing happen and did not want it to happen under any circumstances. It was a pure accident entirely. I believe the case of the "Adele" was simply that a loss occurred in going from her first port to her second port, and that owing to a large amount of insurance having been noted—if my memory served me right, $114,000—the company protected itself by reinsurance, and this reinsurance, unfortunately being flat, attached to the loss. It is one

of those accidents that have happened heretofore in the history of the company and will happen again. We have a case now precisely similar of a steamer loading cotton in Savannah. We are going to have the whole cargo, and the whole cargo is to be insured by this company perhaps two or three hundred thousand dollars—two hundred thousand dollars anyhow—and knowing that we were going to have the whole cargo, and knowing it is very difficult to obtain reinsurance on amounts of that size, we obtained a flat reinsurance in a certain company of $90,000, I think it was, and before the $90,000 worth of property was on board the vessel took fire and the cargo had to be discharged. There was a general average loss occurred—a loss occasioned by putting the water in the hold of the vessel to put out the fire, which is, of course, in the nature of a general average, and this loss falls entirely on the reinsuring company and not upon us, and they know it. We have another one on a steamer in Baltimore—the "Barrymore." Those two cases
545 we have on hand now. It will frequently happen in a large business; you cannot avoid it. I would simply say it is an accident entirely unintentional.

Q. Have you ever reinsured your whole line by any vessel intentionally without advice to the reinsuring company?

A. Never.

Q. Did you ever do so in the case of the Hibernia during the time of the transactions with that company?

A. No, sir.

Q. Have you ever accidentally or otherwise reinsured your whole interest on a vessel?

A. Yes, sir; as in the cases just mentioned.

Q. How long have you been conversant with the business of reinsurance?

A. Twenty-five years.

Q. All the time you have been with this company?

A. Yes, sir.

Q. During that time you have placed reinsurance in other companies, and to what extent? Give an estimate.

A. I should say that the company had paid away premiums on reinsurances during that period of certainly a million and a half dollars.

Q. During what period of time?

A. During the period of time of my connection with the company.

Q. What is the custom of marine insurance companies as to the payment of losses under a reinsurance policy?

A. Prompt response to the bill that is sent in.

546 Q. Did or did not the reinsuring companies pay the amounts reinsured by them in the ten cases mentioned in the bill and answer, as well as in all the other cases inquired into in this case?

Objected to because it is a clear case of *res inter alias acta.*

A. Yes, sir.

Q. Did they make objections, or did they pay promptly?

A. I never heard of any objections being made. I presume they paid promptly; it would have been reported to me if they had not.

Q. Were any of those reinsuring companies Philadelphia companies? If so, name some of them.

Objected to as wholly irrelevant.

A. In this case mentioned?

Q. Yes; all the different cases.

A. Yes, sir; there were some in Philadelphia companies.

Q. Which?

A. The Delaware Mutual and the Insurance Company of the State of Pennsylvania. There is only one other company here, and that company we very rarely have business with.

Q. The complainants charge that defendants made a contract with them specially for the purpose of "securing for themselves a very large business and the complete control thereof." Was this the special object of your reinsurance transactions with the Hibernia?

547 Objected to, as there is no such allegation in the bill.

A. No, sir.

Q. Complainants charge that the sums of money so insured "were very much larger than the sums of money usually insured by defendants on any one vessel on any one voyage," and that to secure indemnity against unusual excessive loss your company contracted with the other insurance companies for reinsurance on the sums "that were or might be in excess of the sums usually insured by defendants;" is that allegation in the bill correct?

A. As to the first part, I say no. As to the second part of the question, I say we then procured reinsurance only against our usual risks, and we had no unusual risks.

Q. Did your company procure reinsurance with the Hibernia to the extent of $10,000 or $5,000 on any one risk, especially with a view of enlarging its business, and has the business of the defendants actually been enlarged or greater risks taken since October, 1880, on account of facilities of reinsurance with the Hibernia?

Objected to on the ground that there is no such allegation in the bill.

A. We did not obtain such reinsurance for the purposes named, and there has been no enlargement of the company's business on account of reinsurance so had with the Hibernia.

Q. Has or has not your company always taken large risks prior to its obtaining reinsurance with complainants?

A. Yes, sir.

Q. The complainants charge in their bill as follows, to wit: "In pursuance thereof," meaning and referring to the allegations
548 or intimations in the bill, these defendants applied through Charles Platt, Jr., of Philadelphia, on October 11th, 1880, "to reinsure the defendants on the excess of their usual lines," which sum was $50,000; please state whether, to your knowledge, the defendants ever made such an application for reinsurance.

A. No, sir.

Q. Did your company ever promise or intimate or say to or assume through yourself or any authorized agent towards the complainants that it would never reinsure any part of what the complainants call your company's usual line of $50,000, and did or did not your company have such a usual line of risk?

A. No, sir. I say no, sir, to both arms of the question.

Q. Had your company anything to do with or any interest or concern in the modification of policy 268, in 1883, reducing the extent of reinsurance from $10,000 to $5,000?

A. No, sir.

Q. Has your company complied or not strictly and fairly and in good faith with all the terms and conditions of your policies with the Hibernia and dealt in all things fairly with the complainants?

Objected to because it is a question for the court, judging from the facts.

A. It has, to the best of my knowledge and belief.

Q. Has your company given or not to the complainants all the knowledge and information it was in possession of as to the
549 risks under policies of reinsurance and as to all losses or misfortunes thereunder as it is usual, proper, or necessary to convey to reinsurers, and was this information given as soon as it could be?

A. To the best of my knowledge and belief, it was.

Q. Was there ever on the part of your company any concealment of facts material to the risks, any neglect or failure to disclose the same, and as soon as known?

Objected to on the ground that it is not for the witness to answer, but for the court.

A. No, sir.

Q. Complainants charge that they are informed and believe that many reports of risks sent by your company to them were false and untrue and were outside of the terms of your contract with them. Please state whether your reports were correct or not and whether sent to reinsurers as soon as possible or not.

Objected to on the same ground.

A. To the best of my knowledge and belief, they were always correct and were sent as soon as possible.

Q. Complainants charge that many demands for loss made upon them by your company were predicated upon false and untrue statements, and that a great many payments for loss made by them to your company were made in error and induced by false and untrue statements, and that they are entitled to recover the same. Please state whether your statements of loss were true and correct statements and your demands of payment for such loss justly founded or not.

Objected to on the same ground.

550 A. They were just and true, to the best of my knowledge and belief, in all cases, and our demands were properly founded.

Q. Were or were not all the premiums of reinsurance due to complainants by defendants correctly reported by defendants on each and every risk upon each vessel, and were or were not all of such premiums duly and wholly paid by defendants to complainants?

A. Yes, sir; they were always reported. I am speaking now without having the detail under my own charge. To the best of my knowledge and belief every report was made correctly and the premiums were paid.

Q. Were those your instructions?

A. Yes, sir.

Q. To your agents and employees in this company?

A. Yes, sir; the general instructions of the company.

Q. Had you any special complaint addressed to you on that subject?

A. No, sir.

Q. Or any failure of your agents or employees to do their duty in the matter?

A. No, sir.

Q. Complainants charge that they are informed and believe that defendants have reported to them "a great many other reinsurance risks upon which complainants have paid to defendants divers claims and demands for special average losses which were false and untrue and which were never within the terms of complainants' contract of reinsurance with the defendants." Please state whether or not this charge of complainants' bill is untrue.

Objected to on the same ground.

551 A. No, sir.

Q. Complainants also charge that they are informed and believe that "a great many risks to which complainants' several policies of reinsurance attached, and for which complainants were and are entitled to be paid by defendants' usual premiums, have never been reported to complainants, and complainants have received no credits from defendants for the premiums that have accrued thereon." State whether or not this charge in complainants' bill is true.

Same objection.

A. No, sir.

Q. Has your company any claims for losses yet outstanding against the complainants?

A. Yes, sir; we have.

Q. Accounts for same are now being prepared in your company now?

A. Yes, sir.

Q. And are filed in this case?

A. Yes, sir.

Q. Does the insurance commissioner of the State of Pennsylvania

inquire into the condition of the several companies in Philadelphia yearly?

Objected to as wholly immaterial and irrelevant.

A. Yes, sir.

Q. Has there been any special report made on the standing of your company by said commissioner within four or five years? And, if so, state.

552 A. In pursuance of orders of the insurance commissioner some few years ago, if you allude to that.

Q. Yes, sir.

A. A few years ago an examination was instituted into the condition of every Pennsylvania company and, among others examined, this company was also examined.

Q. I wish you to refer to page XXVII of the Ninth Annual Report of the Insurance Commissioner of the State of Pennsylvania, published in 1882, the report being, at said page XXVII, of the Insurance Company of North America, of Philadelphia, and I wish you to read the concluding paragraph of said report of your company, which is at page XXX of said report.

Mr. Sansum asks the counsel for the defendants whether it is his purpose to put into this case as evidence a part of a report made by the insurance commissioner of Pennsylvania for the year 1882 upon the condition of the defendants.

Mr. SABOURIN: Yes; I wish to show the standing of this company, and first of all to have an extract from the report read and finally to offer the whole report of the commissioner of Pennsylvania in evidence.

Mr. SANSUM: To which I object on the ground that it is immaterial, irrelevant, and incompetent, but I have no objection, if, when it comes to the trial of the cause, the court shall pass upon it as proper evidence, to your reading from the book.

553 (It is agreed that the Ninth Pennsylvania Fire and Marine Insurance Report for the year 1881 shall be offered in evidence with the permission to counsel for the defendants to read extracts from said book and offer it as a part of his evidence, the portions he reads subject to the objection made by counsel for the complainants.)

Cross-examination by Mr. SANSUM:

Q. What did you intend to retain on the "Budstikken?"

A. From $12,000 to $15,000.

Q. What did you intend to retain on the barque "Adele?"

A. About $30,000.

Mr. WILLIAM PLATT, being recalled, stated: On the last line of page 255 the word "insurance" should be "reinsurance." On fourth line from the top, on page 257, the word "cargo" should be "cargoes."

Mr. SANSUM:

Q. In a letter written by the defendants to Marshall J. Smith, of New Orleans, dated March 10th, 1882, it is stated that "in the case of the 'Tonawanda' the 10,000 line was retained by special permission, the vessel being known to us as being in all respects
554 good, although old." My question is now, How was that special permission obtained?

A. Special permission was accorded by Charles Platt, Jr., as the representative of the Hibernia Insurance Company.

Q. Was that permission asked for in writing?

A. No, sir.

Q. How was it asked for?

A. I suppose simply by asking the question, "Will the Hibernia reinsure us to the extent of $10,000 on the 'Tonawanda?'"

Q. You say you suppose. You are not answering these questions from any personal knowledge of your own?

A. This is to the best of my knowledge and belief.

Q. You have no recollection of it?

A. None whatever; it would be impossible for me to have.

Complainants' counsel offers in evidence copy of letter dated Philadelphia, March 10th, 1884, to Marshall J. Smith, of New Orleans, written by Charles Platt, president of the defendant company, marked by the master "Y."

Q. In speaking to the several questions which have been propounded to you on this examination, wherein you mention dates, amounts, names of vessels, and voyages, you are not speaking from memory, but from books and papers of the defendants?

A. I am speaking from the books.

Solicitor for the defendants offers in evidence the five poli-
555 cies, numbered 277, 296, 297, 306, and 268, to prove *rem ipsam*.

Complainants' counsel objects to the offer. The papers must go into the case as they are and not for the purpose only of proving that such policies were issued.

Said papers were marked, respectively, Nos. 1, 2, 3, 4, and 5.

Defendants' counsel offers in evidence list showing details of payment of premiums by defendant company to complainant company. Marked by the master B 9.

Testimony closed in Philadelphia.

556 *Depositions of J. W. Comes and Ferdinand Motz, Witnesses for Defendants.*

Commission issued June 17, 1885.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of Louisiana.

To any United States commissioner for the second circuit, southern district of New York, having an office in the city of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you W. J. Comes, president, and Henry D. King secretary, of the Commercial Insurance Company of New York; Ferdinand Motz, president, and William T. Lockwood, secretary, of the Great Western Marine Insurance Company of New York, or either of them, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in said court, wherein The Hibernia Insurance Company of New Orleans is plaintiff and The Insurance Company of North America is defendant, and the same examinations, so taken and reduced to writing, you certify under your hand and send
557 enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 17th day of June, anno Domini 1885, and of the Independence of the United States of America the 109 year.

[SEAL.] H. J. CARTER,
*Deputy Clerk.*

558 Interrogatories to be propounded to W. J. Comes, president, and to Henry D. King, secretary, of the Commercial Mutual Insurance Company of New York, and to Ferdinand Motz, —, and Wm. T. Lockwood, secretary, of the Great Western Marine Insurance Company of New York, or either of said persons, on behalf of defendants.

1st. What is your name and occupation?

2nd. If you say you have been engaged in the marine insurance business, please state for how long a time and the extent of your knowledge and experience in said business, and especially that of reinsurance and the customs and usages thereof in your city and other large cities, as well as in England.

3d. If an application for reinsurance is made, say, by the North America to the Hibernia, for $10,000 upon sugar, being in excess of $25,000, on ship Obi, bound to Boston from the Philippine Islands, in June, 1881, could or would you understand, or could the Hibernia understand and believe, that the North America carried or intended

to carry a risk greater than $25,000 on said ship Obi at the time of the application? Would it be or not reasonable to think and
559 infer from such an application that the North America carried or intended to carry insurance on anything else on that voyage of the Obi than the sugar mentioned in the application, and if the risk bore on a mixed cargo would it or not be so stated in the application? Would it or not be reasonable for the Hibernia to infer and believe from such an application that the North America carried or intended to carry $50,000 on said ship Obi, distributed on the hull or other cargo of said ship, as the Hibernia say they presumed and believed?

4th. Do or do not the lines carried by the insurance companies vary greatly, according to seasons, voyages, character of ships, &c., and is it or not the usage or custom of underwriters to bind themselves to any invariable amount as the risks to be be carried by them? Do or do not, on the contrary, those amounts at risk vary constantly according to circumstances?

5th. May or may not a company, when it thinks advisable and in accordance with the customs of underwriters, reinsure its whole line or amount at risk?

6th. When a reinsurance is made flat on the cargo of a
560 certain ship on a certain voyage and it is finally found that the company reinsured had actually nothing at risk on said ship, are the premiums to be returned or not, according to the customs of underwriters?

7th. Does it happen or not, at times, that in cases of vessels from distant foreign ports, such as on the Pacific or Indian Oceans, the particulars of insurance and the knowledge of the amount actually at risk reach the original insurers only long after the occurrence of a loss?

8th. Is it or not possible, reasonable, and in accordance with maritime usages for an insurance company expecting a line of, say, $114,000 on a certain vessel from a distant port, say Batavia, and willing to carry $25,000 as its own line, to protect itself by reinsuring flat and on the excess of $25,000; and in such case, and before the lines can be completed, and before the vessel has taken on board her entire intended cargo, should a loss occur, would or would not the flat reinsurances apply and be made to pay first and then and after only the reinsurances on excess pay *pro rata* of the loss, if any there be, remaining to be covered, with the entire open line reinsured?

9th. Is it or not usual and proper for an insurance com-
561 pany doing a large marine business with far and distant points, the facilities of advice from which are often imperfect, slow, and uncertain, and the company's knowledge of the amount actually at risk consequently uncertain, to protect itself from excessive loss by reinsuring flat as well as on excess of certain amounts? And, if you answer yea, please state whether in such a case the original insuring company having secured both flat reinsurance and reinsurance on excess, either under open-contract policies or directly, it might so happen in the event of a loss less than the excess reinsur-

ance occurring before the cargo has been completed that such flat reinsurance may absorb, unintentionally and unknowingly to the company reinsured, the entire amount intended to be the risk of the reinsured company. And in such a case would or would not the reinsurers flat be the first and only ones liable for said loss, to the exclusion of the reinsurers on stated excess?

10th. Should you know or think of anything pertaining to the usage or custom of marine underwriters upon which the aforesaid interrogatories may bear and which may be of use or benefit to the defendants in order to supply, to elucidate, complete, or more fully explain the questions heretofore put to you, but upon which you may not have been herein specially interrogated, please state the same — fully and distinctly as if you had been directly interrogated thereon.

E. SABOURIN,
*Solicitor for Def'ts.*

562 The Hibernia Insurance Company objects to each one of foregoing direct interrogatories separately, and for cause of objection state that they and each of them are immaterial, irrelevant, and incompetent, and because the testimony sought to be elicited by them and each of them is immaterial, irrelevant, and incompetent.

June 17th, 1885.

O. B. SANSUM,
*Complainants' Solicitor.*

563 Depositions of W. J. Comes and Ferdinand Motz, witnesses produced, sworn, and examined before me, Edward L. Owen, an United States commissioner for the southern district of New York, second circuit, at my office, No. 16 Exchange Place, in the city of New York, on the 29th day of June, 1885, on behalf of the defendant, under and in pursuance of a commission issued out of the circuit court of the United States for the eastern district of Louisiana, in the fifth judicial circuit, in a certain cause therein pending wherein The Hibernia Insurance Company of New Orleans is plaintiff and The Insurance Company of North America is defendant.

The said W. J. Comes and Ferdinand Motz, being by me each severally duly sworn to tell the truth, the whole truth, and nothing but the truth in respect to the matter to be inquired —, do each for himself depose and say in answer to the interrogatories annexed to said commission as follows:

*Deposition of W. J. Comes.*

To the first interrogatory he saith: My name is W. J. Comes. I am president of the Commercial Mutual Insurance Company of New York.

To the second interrogatory he saith: I have been engaged in the marine insurance business in the city of New York about twenty-

seven years. I have been an officer of said company eighteen
564 years. I have had a varied experience in all departments of the business, including that of reinsurance of risks, and am familiar with the customs and usages as to reinsurances in this city.

To the third interrogatory he saith: I would not understand from such an application that the North America intended to carry a risk greater than $25,000 on ship Obi at the time of the application. I would infer from such an application that the reinsurance with the Hibernia attached only on sugar, and that the $25,000 might cover other interests besides sugar if the application was in the usual excess form. If the reinsurance in the Hibernia had been intended to cover any other interest than sugar it would have been so stated in the application. I do not think that it would have been reasonable for the Hibernia to infer that the North America carried or intended to carry $50,000 on the risk per "Obi."

To the fourth interrogatory he saith: Lines carried by insurance companies vary greatly, according to seasons, character of vessels, &c. It is not the usage or custom for underwriters to bind themselves to any invariable amount as to risks to be carried by them. On the contrary, the amounts so carried would vary constantly according to circumstances.

565 To the fifth interrogatory he saith: Companies, if they deem it advisable, may, and occasionally do, reinsure their whole line or amount at risk.

To the sixth interrogatory he saith: If the reinsured company had nothing at risk it is customary for the reinsuring companies to return the whole premium.

To the seventh interrogatory he saith: It does so happen at times.

To the eighth interrogatory he saith: It would be possible, reasonable, and customary for a company expecting a line of about $114,000 on a certain vessel to protect itself by reinsuring flat, and also on an excess of the line they are willing to carry. The flat insurance would first apply to the loss up to $25,000 and then the reinsurances on the excess over that sum, if sim'ultaneous, would apply to the remaining amount of loss.

To the ninth interrogatory he saith: I answer yes to the first proposition of the interrogatory. In the event of a loss occurring before the cargo has been completed such flat reinsurances might absorb unintentionally the entire amount intended to be at the risk of the reinsured company, and in such a case the flat rein-
566 surances would be the first and only ones liable for the loss to the exclusion of the reinsurances on stated excesses.

To the tenth interrogatory he saith: I have no knowledge of the actual facts in this case. I having nothing further to add, except that the word "carry" as used in the foregoing interrogatories is understood by me to mean the amount the reinsured company is content to retain as its share of the risk.

W. J. COMES.

Subscribed and sworn — before me this 29th day of June, 1885.

EDWARD L. OWEN,

*U. S. Commissioner for the Southern Dist. of New York.*

567 *Deposition of Ferdinand Motz.*

To the first interrogatory he saith: My name is Ferdinand Motz. I am president of the Great Western Insurance Company of New York.

To the second interrogatory he saith: I have been engaged in the marine insurance business in the city of New York for the last twelve years, during all of which time I have been president of the Great Western Ins. Co. and during all that time and for some time prior I have been familiar with the business of reinsurance and the customs and usages thereof in New York city.

To the third interrogatory he saith: By such an application I should understand that the North America intended to carry no greater risk than $25,000 on ship Obi at time of the application. From such an application the reinsurance with the Hibernia would attach only on sugar, but the $25,000 might cover other interests besides that of sugar, if the application was in the usual excess form. If the reinsurance in the Hibernia had been intended to cover any other interest than sugar it would have been so stated in the
568 application. It would not have been reasonable for the Hibernia to infer that the North America carried or intended to carry $50,000 on the risks per Obi.

To the fourth interrogatory he saith: Lines carried by insurance companies vary greatly, according to seasons, voyages, character of the ship, &c. It is not the usage or custom of underwriters to bind themselves to any invariable amount as to the risks to be carried by them. Those amounts so carried vary constantly, according to circumstances.

To the fifth interrogatory he saith: Yes.

To the sixth interrogatory he saith: They are to be returned.

To the seventh interrogatory he saith: Yes.

To the eighth interrogatory he saith: It is possible, reasonable, and customary for insurance companies expecting a line of, say, $114,000 on a certain vessel from a certain distant port to reinsure flat and also on excess of the line which they expect to carry.
569 If a loss should occur the flat insurances would first become liable up to the sum of $25,000 intended to be carried by the reinsuring company, and after that the reinsurances on the excess over that sum would apply in their proper order.

To the ninth interrogatory he saith: It is proper for an insurance company doing business in the manner described in this interrogatory to effect reinsurance, both flat and on excess, either under open contract policies or otherwise. In case of a loss occurring before the cargo has been completed the flat reinsurances might absorb unintentionally the entire amount intended to be at the risk of the reinsured company, and in such case the flat reinsurances would be

the first and only ones liable for the loss to the exclusion of the re-insurances on stated excess.

To the tenth interrogatory he saith: I know nothing further pertaining to the matter herein inquired of.

FERDINAND MOTZ.

Subscribed and sworn — before me this 29th day of June, 1885.

EDWARD L. OWEN,
*U. S. Commissioner for the Southern Dist. of New York.*

570 UNITED STATES OF AMERICA,
*Southern District of New York:*

I, Edward L. Owen, a United States commissioner for the southern district of New York, second circuit, to whom was delivered the foregoing commission for execution, do hereby certify that on the 29th day of June, 1885, at my office, No. 16 Exchange Place, in the city of New York, I was attended by W. J. Coms and Ferdinand Motz, witnesses named in said commission; that said witnesses were each by me duly sworn to testify the truth, the whole truth, and nothing but the truth in respect of the matters to be inquired of; that their depositions were by me reduced to writing, and after carefully reading the same over to said witnesses they signed the same in my presence.

I further certify that I am not of counsel for either of the parties to said suit nor in any manner interested in the result thereof.

In witness whereof I have hereunto subscribed my name & affixed my seal this 29th day of June, 1885, and the Independence of the United States the one hundred and ninth.

[SEAL.] EDWARD L. OWEN,
*U. S. Commissioner for the Southern Dist. of New York.*

571 Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of Louisiana.

To any United States commissioner for the first circuit and State of Massachusetts having an office in the city of Boston:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Ramsom B. Fuller, president, and Robert Lord, secretary, of the Boston Marine Insurance Company, of Boston, or either of them, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now pending in the said court, wherein The Hibernia Insurance Company of New Orleans is plaintiff and The Insurance Company of North America is defendant, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 17th day of June, anno Domini 1885, and of the Independence of the United States of America the 109 year.

[SEAL.] H. J. CARTER,
*D'y Clerk.*

572 Circuit Court of the United States for the Eastern District of Louisiana.

THE HIBERNIA INSURANCE CO. OF NEW ORLEANS
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. —.

DISTRICT OF MASSACHUSETTS:

The deposition of Ransom B. Fuller, a witness on the part and behalf of the defendants in the cause above entitled, now depending in said circuit court in and for the eastern district of Louisiana, taken before me, Fisher Ames, a commissioner in and for the district of Massachusetts, appointed by the circuit court of the United States for the first circuit under acts of Congress in such case made and provided, at my office, No. 2 Pemberton Sqr., in Boston, in said district of Massachusetts, on the 29th day of June, 1885, pursuant to the commission hereto annexed and upon the interrogatories thereto annexed.

No one was present but thewitness and the commissioner.

The said RANSOM B. FULLER, having been first by me duly sworn to tell the whole truth relative to the issue in the cause aforesaid, gave the following deposition:

Interrogatories to be propounded to Ransom B. Fuller, president, and Robert Lord, secretary, of the Boston Marine Insurance Company, of Boston, Massachusetts, or either of the said persons, on behalf of defendants:

573 1. What are your name and occupation?

2nd. If you say you have been engaged in the marine insurance business, please state for how long a time and the extent of your knowledge and experience of said business, and especially that of reinsurance, and the customs and usages thereof in your city and other large cities, as well as in England.

3d. If an application for reinsurance is made, say, by the North America to the Hibernia for $10,000 upon sugar, being excess of $25,000, on ship Obi, bound to Boston from the Philippine Islands, in June, 1881, could or would you understand or could the Hibernia understand and believe that the North America carried or intended to carry a risk greater than $25,000 on said ship Obi at the time of the application? Would it be or not reasonable to think and infer from such an application that the North America carried or intended

to carry insurance on anything else on that voyage of the Obi than the sugar mentioned in the application; and, if the risk bore on a mixed cargo, would it or not be so stated in the application? Would it or not be reasonable for the Hibernia to infer and believe from such an application that the North America carried or intended to carry $50,000 on said ship Obi, distributed on the hull or other cargo of said ship as the Hibernia say they presumed and believed?

574 4. Do or do not the lines carried by insurance companies vary greatly, according to seasons, voyages, character of ships, &c., and is it or not the usage or custom of underwriters to bind themselves to any unvariable amount as to the risks to be carried by them? Do or do not, on the contrary, those amounts at risk vary constantly according to circumstances?

5th. May or may not a company, when it thinks advisable and in accordance with the customs of underwriters, reinsure its whole line or amount at risk?

6th. When a reinsurance is made flat on the cargo of a certain ship on a certain voyage and it is finally found that the company reinsured had actually nothing at risk on said ship, are the premiums to be returned or not according to the customs of underwriters?

7th. Does it happen or not at times that in cases of vessels from distant foreign ports, such as on the Pacific and Indian Oceans, the particulars of insurance and the knowledge of the amount actually at risk reach the original insurance only long after the occurrence of a loss?

8th. Is it not possible, reasonable, and in accordance with maritime usages for an insurance company expecting a line of, say, $114,000 on a certain vessel from a distant port, say Batavia,

575 and willing to carry $25,000 as its own line to protect itself by reinsuring flat and on the excess of $25,000, and in such a case and before the lines can be completed and before the vessel has taken on board her entire intended cargo, should a loss occur, would or would not the flat reinsurances apply and be made to pay first and then and after only the reinsurances on excess pay *pro rata* on the loss, if any there be, remaining to be covered with the entire open line reinsured?

9th. Is it or not usual and proper for an insurance company doing a large marine business with far and distant points, the facilities of advice from which are often imperfect, slow, and uncertain, and the company's knowledge of the amount actually at risk consequently uncertain, to protect itself from excessive loss by reinsuring flat as well as on excess of certain amounts? And, if you answer yea, please state whether in such a case the original insuring company, having secured both flat reinsurance and reinsurance on excess, either under open contract policies or directly, it might so happen, in the event of a loss less than the excess reinsurance occurring before the cargo had been completed, that such flat reinsurance may absorb, unintentionally and unknowingly to the company reinsured, the entire amount intended to be the risk of the reinsured company. And in such a case would or would not the reinsurer's flat be the

first and only ones liable for said loss, to the exclusion of the re-insurers on stated excess?

576 10th. Should you know or think of anything pertaining to the usage or custom of marine underwriters upon which the aforesaid interrogatories may bear and which may be of use or benefit to the defendants in order to supply to, elucidate, complete, or more fully explain the questions hereinabove put to you, but upon which you may not have been herein specially interrogated, please state the same fully and distinctly as if you had been directly interrogated thereon.

E. SABOURIN,
*Solicitor for Def'ts.*

The Hibernia Insurance Company objects to each one of the foregoing interrogatories separately, and for cause of objection states that they and each of them are immaterial, irrelevant, and incompetent, and because the testimony sought to be elicited by them and each of them is immaterial, irrelevant, and incompetent.

New Orleans, June 17th, 1885.

O. B. SANSUM,
*Comp'ts' Solicitor.*

577 Direct interrogatories and the deponent's answers thereto, as follows:

Int. 1. What are your name and occupation?

Ans. Ransom B. Fuller, president of the Boston Marine Insurance Company.

2. If you say you have been engaged in the marine insurance business, please state for how long a time and the extent of your knowledge and experience of said business, and especially that of insurance, and the customs and usages thereof in your city and other large cities, as well as in England.

Ans. I have been engaged in that business for nineteen years, and have had large experience in all classes of marine insurance, and particularly in reinsurances.

3. If an application for reinsurance is made, say, by the North America to the Hibernia for $10,000 on sugar, being in excess of $25,000, on ship "Obi," bound to Boston from the Philippine Islands, in June, 1881, could or would you understand or could the Hibernia understand and believe that the North America carried or intended to carry a risk greater than $25,000 on said ship "Obi" at the time of the application? Would it or not be reasonable to think and infer from such an application that the North America carried or intended to carry insurance on anything else on that voyage of the "Obi" than the sugar mentioned in the application, and if the risk bore on a mixed cargo would it or not be so stated in the application? Would it or not be reasonable for the Hibernia to

578 infer and believe from such an application that the North America carried or intended to carry $50,000 on said ship "Obi," distributed on the hull or other cargo of the said ship as the Hibernia say they presumed and believed?

Ans. If proposal was submitted to me for $10,000 on sugar, excess of $25,000, by the Insurance Company of North America I should suppose the said company retained not over $25,000 on sugar and might reasonably reduce its net line on sugar to less than that sum by flat reinsurance or reinsurance on an excess less than $25,000 in other companies.

That the said company might and very probably would retain other more desirable goods up to $50,000, or whatever sum they deemed prudent to carry, which matter of prudence would seem to be a matter for their own consideration only. If the risk bore on a mixed cargo the reinsurance might very properly be made on one article, such as sugar only, and I should not be supposed to know or presume that there were other cargo to be reinsured unless the proposal stated "goods" rather than "sugar" or any other one specific kind of merchandise.

4. Do or do not the lines carried by insurance companies vary greatly, according to season, voyages, character of ships, &c., and is it or not the usage or custom of underwriters to bind themselves to any invariable amount as the risks to be carried by them? Do or do not, on the contrary, those amounts at risk vary constantly according to circumstances?

579 Ans. Lines retained by insurance companies, particularly a large or strong company, vary very materially on season, voyage, class of vessel, and the nature of the cargo carried, and I never knew of any company making or following any invariable rule on such line to be retained.

5. May or may not a company, when it thinks advisable and in accordance with the customs of underwriters, reinsure its whole line or amount at risk?

A. Any company may properly, and sometimes does, reinsure the whole of the originally insured risk.

6. When a reinsurance is made flat on the cargo of a certain ship on a certain voyage and it is finally found that the company reinsured had actually nothing at risk on said ship, are the premiums to be returned or not, according to the customs of underwriters?

A. In case of flat reinsurance, say for $10,000, the original company reinsuring finally having nothing could have no risk to reinsure; consequently all of its insurance would be null and void, and premiums paid for such reinsurance would be refunded in full. The reinsuring company would only attach up to $10,000 on such amount and for the whole of any risk short of $10,000 as may be covered by the original company reinsuring.

7. Does it happen or not at times that in cases of vessels from distant foreign ports, such as on the Pacific and Indian

580 Oceans, the particulars of insurance and the knowledge of the amount actually at risk reach the original insurers only long after the occurrence of a loss?

A. News of loss very often reaches an underwriter long before the details of amount at risk can be or are known to such underwriter. In case a vessel from the Indian or Pacific Oceans being actually lost soon after leaving port the cable news of such vessel would be

known in the United States from forty to sixty days prior to the receipt by consignee of cargo of shipping documents showing amount or value of such shipment

8. Is it not possible, reasonable, and in accordance with maritime usages for an insurance company expecting a line of, say, $114,000 on a certain vessel from a distant port, say Batavia, and willing to carry $25,000 as its own line to protect itself by reinsuring flat and on the excess of $25,000; and in such a case, and before the lines can be completed and before the vessel has taken on board her entire intended cargo, should a loss occur would or would not the flat reinsurances apply and be made to pay first and then and after only the reinsurance on excess pay *pro rata* of the loss, if any there be, remaining to be covered with the entire open line reinsured?

A. Very often and very properly a company expecting a large line by any vessel may have open reinsurance policies attaching on excess, say, of $25,000; such amount of open insurance may be in-
581 sufficient toward fully protecting the whole expected line. In such case flat reinsurance might be made, and in case of loss of said vessel prior to the completion of loading the reinsurers of flat amount would come in and pay up to the amount of their policies accepted, provided there was such a sum at risk on board vessel at the time of such loss, and the reinsurers on excess would contribute to balance of loss incurred by the original insurance company after exhaustion of the flat reinsurance; and I would further state that in many instance one insurance company much prefers acceptance of flat reinsurance from another than to await particulars of open proposal; and if in such case a loss should occur before completion of vessel's loading said reinsuring company would be called on to pay to the original company the latter's loss up to full sum so reinsured and at risk; and within a very short period such a case actually happened between the company of which I am now president and a company located in the city of Boston, and the reinsured company was fully reimbursed for the whole of its loss by the said company up to the whole amount reinsured by them and no demurrer set up against so paying in full.

9. Is it or not usual and proper for an insurance company doing a large marine business with far and distant points, the facilities of advice from which are often imperfect, slow, and uncertain and the company's knowledge of the amount actually at risk conse-
582 quently uncertain, to protect itself from excessive loss by reinsuring flat as well as on excess of certain amounts? And, if you answer yea, please state whether in such a case, the original insuring company having secured both flat reinsurance and reinsurance on excess, either under open contract policies or directly, it might so happen, in the event of a loss less than the excess reinsurance, occurring before the cargo had been completed, that such flat reinsurance may absorb, unintentionally and unknowingly to the company reinsured, the entire amount intended to be the risk of the reinsured company. And in such a case would or would not the reinsurers flat be the first and only ones liable for said loss, to the exclusion of the reinsurers on stated excess?

A. In events occurring as stated in the question it would very properly be the course pursued by the company expecting a large line, and it might and probably would happen that in the event of the loss of the vessel and cargo partly loaded the flat reinsurers would pay in full and reinsurers of excess contribute *pro rata* for such amount as would be found to be their share of what was left.

10. Should you know or think of anything pertaining to the usage or custom of marine underwriters upon which the aforesaid interrogatories may bear and which may be of use or benefit to the defendants in order to supply, to elucidate, complete, or more fully explain the questions hereinabove put to you, but upon which you may not have been herein specially interrogated, please state
583 the same fully and distinctly as if you had been directly interrogated thereon.

A. In general I should say that from the long life and business of the Insurance Company of North America the said company would be thoroughly conversant and familiar with all laws and rules governing the application and distribution of sums covered by reinsurance policies or contracts, and that the said company is well able to judge of any proper line for it to carry on any risk, and also very well able to perform its contract to its customer for any reasonable sum on any risk, even if left with a large sum on them without any reinsurance.

R. B. FULLER.

584 UNITED STATES OF AMERICA, *District of Massachusetts:*

I, Fisher Ames, a commissioner in and for the district of Massachusetts, appointed by the circuit court of the United States for the first circuit, under the act of Congress authorizing the appointment ofc ommissioners "for the more convenient taking of affidavits and bail to be used in civil causes depending in the courts of the United States," and the acts additional thereto, do hereby certify that Ransom B. Fuller, the above-named deponent, appeared before me on the 29th day of June, A. D. 1885, at Boston, in the said district of Massachusetts, and he, having been by me first carefully examined and cautioned and sworn to testify the whole truth relative to the issue in the cause in the caption named, gave the foregoing deposition by him subscribed; that said deposition was reduced to writing in the presence of the witness and afterwards transcribed, with the interrogatories, upon the type-writer, and carefully read to said deponent, and then subscribed by him as and for his deposition in my presence; that the said deposition was taken pursuant to the foregoing commission, and the same is forwarded, without alteration, to the court for which it was taken. I further testify that I am not of counsel nor attorney to either of the parties in the cause in and for which the said deposition was taken, nor in any way in-
585 terested in the event of said cause.

In testimony whereof I have hereto set my hand and seal this 29th day of June, A. D. eighteen hundred and eighty-five.

[SEAL.] FISHER AMES,
*Commissioner of the Circuit Court of the United States for the District of Massachusetts.*

Commissioner's fees paid by def'ts, $10.

F. AMES.

586 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of Louisiana.

To any United States commissioner for the third circuit and eastern district of Pennsylvania, having an office in the city of Philadelphia:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Henry D. Sherrerd, president, and Joseph H. Hollinshead, secretary, of the Insurance Company of the State of Pennsylvania of Philadelphia, and Thos. C. Hand, president, and Henry Tiltem, secretary, of the Delaware Mutual Safety Insurance Company of Philadelphia, or either of them, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein The Hibernia Insurance Company of New Orleans is plaintiff and The Insurance Company of North America is defendant, and the same examinations so taken and reduced to writing you certify under your hand and seal and send inclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of
587 the Supreme Court of the United States, at the city of New Orleans, this 17th day of June, anno Domini, 1885, and of the Independence of the United States of America the 109 year.

[SEAL.] H. J. CARTER,
*Deputy Clerk.*

588 Interrogatories to be propounded to Henry D. Sherrerd, president, and Joseph H. Hollinshead, secretary, of the Insurance Company of the State of Pennsylvania of Philadelphia, and Thos. C. Hand, president, and Henry Tiltem, secretary, of the Delaware Mutual Safety Insurance Company of Philadelphia, or either of said persons, on behalf of defendants.

1st. What are your name and occupation?

2nd. If you say you have been engaged in the marine insurance usiness, please state for how long a time and the extent of your knowledge and experience in said business, and especially that of reinsurance, and the customs and usages thereof in your city and other large cities, as well as in England.

3d. If an application for reinsurance is made, say, by the North America to the Hibernia for $10,000 upon sugar, being in excess of $25,000, on ship Obi, bound to Boston from the Philippine Islands, in June, 1881, could or would you understand and believe or could the Hibernia understand and believe that the North America carried or intended to carry a risk greater than $25,000 on said ship Obi at the time of the application? Would it be or not reasonable to think and infer from such an application that the North America carried or intended to carry insurance on anything else on that
589 voyage of the Obi than the sugar mentioned in the application, and if the risk bore on a mixed cargo would it not be so stated in the application? Would it or not be reasonable for the Hibernia to infer and believe from such an application that the North America carried or intended to carry $50,000 on said ship Obi, distributed on the hull or other cargo of said ship as the Hibernia say they presumed and believed?

4th. Do or do not the lines carried by insurance companies vary greatly, according to the seasons, voyages, character of ships, &c., and is it or not the usage or custom of underwriters to bind themselves to any invariable amount as to the risks to be carried by them? Do or do not, on the contrary, those amounts at risk vary constantly according to circumstances?

5th. May or may not a company, when it thinks advisable and in accordance with the customs of underwriters, reinsure its whole line or amount at risk?

6th. When a reinsurance is made flat on the cargo of a certain ship on a certain voyage and it is finally found that the company reinsured had actually nothing at risk on said ship, are the premiums to be returned or not, according to the customs of underwriters?

7th. Does it happen or not at times that in cases of vessels
590 from distant foreign ports, such as on the Pacific or Indian Oceans, the particulars of insurance and the knowledge of the amount actually at risk reach the original insurers only long after the occurrence of a loss?

8th. Is it or not possible, reasonable, and in accordance with maritime usages for an insurance company expecting a line of, say, $114,000 on a certain vessel from a distant port, say Batavia, and willing to carry $25,000 as its own line to protect itself by reinsuring flat and on the excess of $25,000, and in such a case, and before the lines can be completed and before the vessel has taken aboard her entire intended cargo, should a loss occur would or would not the flat insurances apply and be made to pay first and then and after only the reinsurances on excess pay *pro rata* of the loss, if any there be, remaining to be covered with the entire open line reinsured?

9th. Is it or not usual and proper for an insurance company doing a large marine business with far and distant points, the facilities of advice from which are often imperfect, slow, and uncertain and the company's knowledge of the amount actually at risk consequently uncertain, to protect itself from excessive loss by

reinsuring flat as well as on excess of certain amounts? And, if you answer yea, please state whether in such a case, the original insuring company having secured both flat reinsurance and reinsurance on excess, either under open contract policies or directly,
591 it might so happen in the event of a loss less than the excess reinsurance, occurring before the cargo has been completed, that such flat reinsurance may absorb, unintentionally and unknowingly to the company reinsured, the entire amount intended to be the risk of the reinsured company, and in such a case would or would not the reinsurers flat be the first and only ones liable for said loss, to the exclusion of the reinsurers on stated excess?

10th. Should you know or think of anything pertaining to the usage or custom of marine underwriters upon which the aforesaid interrogatories may bear and which may be of use or benefit to the defendants in order to supply to, elucidate, complete, or more fully explain the questions hereinabove put to you, but upon which you may not have been specially interrogated, please state the same fully and distinctly as if you had been directly interrogated thereon.

E. SABOURIN,
*Solicitor for Def'ts.*

The Hibernia Insurance Company objects to each one of the foregoing direct interrogatories separately, and for cause of objection states that they and each of them are immaterial, irrelevant, and incompetent, and because the testimony sought to be elicited by them and each of them is immaterial, irrelevant, and incompetent.

June 17th, 1885.

O. B. SANSUM,
*Complainants' Solicitor.*

592 In the United States Court for the Eastern District of Louisiana.

THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

Answers of Henry D. Sherrerd, president of the Insurance Company of the State of Pennsylvania, and Thomas C. Hand, president of the Delaware Mutual Safety Insurance Company, to interrogatories propounded in a commission exit from the aforesaid court on the 17th day of June, 1885, directed to any United States commissioner for the third circuit of the eastern district of Pennsylvania having an office in the city of Philadelphia.

The said HENRY D. SHERRERD, being duly affirmed according to law, deposes and, in answer to the aforesaid interrogatories, says:

In answer to the first interrogatory: My name is Henry D. Sherrerd. I am the president of the Insurance Company of the State of Pennsylvania and have been for twenty-seven years. I
593 have been engaged in the marine and fire insurance business for forty-six years.

In answer to the second interrogatory: I know nothing about the custom of reinsurance in England, but, so far as America is concerned, I do know something about it; it is the custom for one insurance company to reinsure its lines in other companies and help bear the burden.

In answer to the third interrogatory: If such an application as is specified in the first part of the third interrogatory had been made by the Insurance Company of North America to the Hibernia Insurance Company, the Hibernia Insurance Company could not understand or believe that the Insurance Company of North America carried or intended to carry a risk greater than twenty-five thousand dollars on said ship Obi at the time of the application. It would not be reasonable to suppose that the North America intended to carry any insurance on anything else on the voyage of the Obi specified than the sugar mentioned in the application. If the risk bore on a mixed cargo it would not be so stated in the application; it would be generally stated "cargo." It would not be reasonable for the Hibernia Insurance Company to infer and believe from such an application that the Insurance Company of North America carried or intended to carry fifty thousand dollars on said ship Obi, distributed on the hull or other cargo of the said ship.

In answer to the fourth interrogatory: The lines carried by insurance companies vary greatly, according to seasons, voyages,
594 cargoes, ships, etc. It is not the usage or custom for underwriters to bind themselves to any invariable amount as to the risks to be carried by them. The amounts at risk do vary constantly, according to circumstances.

In answer to the fifth interrogatory: An insurance company may not, in accordance with the customs of underwriters, reinsure its whole line or amount at risk.

In answer to the sixth interrogatory: When a reinsurance is made flat on the cargo of a certain ship for a specified voyage and it is found that the company reinsuring had nothing to risk on said ship, the premiums are to be returned in accordance with the custom of underwriters.

In answer to the seventh interrogatory: It sometimes happens that in cases of vessels from distant foreign ports the particulars of insurance and the knowledge of the amount actually at risk only reach the original insurers long after the occurrence of a loss.

In answer to the eighth interrogatory: It is possible, reasonable, and in accordance with maritime usages for an insurance company accepting a line of, say, one hundred and fourteen thousand dollars on a certain vessel from a distant port and willing to carry twenty-five thousand dollars on its own line to protect itself by reinsuring flat and in the excess of twenty-five thousand dollars. In the case as stated in the eighth interrogatory the flat reinsurance might be called upon to pay the whole amount and the reinsurances
595 on excess their *pro rata*. It is difficult to get a thing of that kind exactly, because it is so uncommon an occurrence. The flat insurance might be called upon to pay the whole loss.

In answer to the ninth interrogatory: It is usual and proper for

an insurance company doing business at distant points, where the facilities of advice are imperfect and the amounts actually at risk uncertain, to protect itself from excessive loss by reinsuring flat, as well as in excess of certain amounts. It might so happen in such a case that the original insurance company, having secured both flat insurance and reinsurance on excess, either under open contract policies or directly, in the event of a loss less than the excess reinsurance occurring before the cargo had been completed that such flat reinsurance might absorb, unintentionally and unknowingly to the company reinsured, the entire amount intended to be the risk of the reinsured company, and in such a case the reinsurer's flat would be the first and only ones liable to said loss.

In answer to the tenth interrogatory: I have no answer to make to the tenth interrogatory.

HENRY D. SHERRERD.

Affirmed and subscribed to before me this twenty-ninth day of June, A. D. 1885.

CHARLES GIBBONS, JR.,
*United States Commissioner.*

596 The said THOMAS C. HAND, being duly sworn according to law, deposes and, in answer to the aforesaid interrogatories, says:

In answer to the first interrogatory: My name is Thomas C. Hand. I am the president of the Delaware Mutual Safety Insurance Company.

In answer to the second interrogatory: I have been vice-president and president of the same company for the last thirty-four years. My knowledge and experience have extended over a period covering thirty-four years. This company has been doing a reinsurance business for others and effecting reinsurances for its own risks during the entire period of my experience. In the marine insurance business it is the practice of marine insurance companies to take the entire risks of their customers by vessel, whereby they are apt to get much larger lines than they wish to retain. It is then the custom to protect the company by effecting reinsurances with other companies beyond that line which they wish to retain. This is largely done, I suppose, by every marine insurance company in the country doing anything like an extended business. With respect to the practice in England I am not familiar.

In answer to the third interrogatory: In answer to this interrogatory upon the facts stated therein I am convinced that the inference would be that the Insurance Company of North America did not intend to carry a greater risk than twenty-five thousand dollars on the ship Obi at the time of the application. It would be
597 an open question whether it would be reasonable to think or infer from the application that the Insurance Company of North America carried or intended to carry insurance on anything else on the voyage named in this interrogatory than the sugar named

in the application. It might cover sugar and hemp both. The risk that bore on a mixed cargo would not necessarily be stated in the application. The North America or the Delaware Mutual might have insured on both sugar and hemp by the same vessel, and they would be at different rates of premium. One is more susceptible of damage than the other, by the vessel even, and a company might choose to reinsure the sugar and keep the hemp or reinsure the hemp and keep the sugar. It does not necessarily follow that the risk as stated in the application would bear on a mixed cargo. It would not be reasonable for the Hibernia Insurance Company to infer and believe from such an application that the Insurance Company of North America carried or intended to carry fifty thousand dollars on said ship Obi, distributed on the hull or other cargo of said ship as the Hibernia Insurance Company say they presumed and believed. It is usual, in effecting insurance on an excess of the amount intended to be carried by the original insurer, to state that this reinsurance is an excess of the amount retained on vessel, freight, cargo, and specie, but that such a reinsurance will apply to cargo only; so that the reserve line is not intended
598 to be the reserve for all interests. How this particular ship was insured I know nothing about.

In answer to the fourth interrogatory: The lines carried by insurance companies vary greatly, according to the seasons, voyages, cargoes, of ship, etc. It is not the usage or custom of underwriters to bind themselves to any invariable amount as to the risks to be carried by them. The amounts at risk do vary constantly, according to circumstances.

In answer to the fifth interrogatory: An insurance company, in accordance with the custom of underwriters, may reinsure its whole line or amonnt at risk whenever it thinks it advisable to do so, so advising their reinsurers.

In answer to the sixth interrogatory: When a reinsurance is made flat on the cargo of a ship for a certain voyage and it is discovered that the company reinsured had nothing at risk on said ship, the premiums, according to the custom of underwriters, must be returned.

In answer to the seventh interrogatory: It frequently happens that in cases of vessels from distant foreign ports, such as of the Pacific or Indian Oceans, the particulars of insurance and the knowledge of the amount actually at risk reach the original insurers only long after the occurrence of the loss.

599 In answer to the eighth interrogatory: In answer to the first portion of the eighth interrogatory I say that it is in accordance with maritime usages for an insurance company accepting a line of, say, one hundred and fourteen thousand dollars on a certain vessel from a distant port and willing to carry twenty-five thousand dollars as its own line to protect itself by reinsuring flat and in the excess of twenty-five thousand dollars. I should answer to the second part of the interrogatory that my opinion is that the company reinsuring flat takes the place, to the extent of that reinsurance, of the original insurer, and, if a loss occurs in the progress

of loading of such a nature as not to prevent the vessel from completing her loading, the company reinsuring flat would pay a *pro rata* proportion of the loss, taking the whole amount that the original insurer had at risk. In the event of a total loss, with a part of the cargo on board, the company reinsuring flat might be compelled to pay that loss, without a contribution from any other company, to the extent of its reinsurance.

In answer to the ninth interrogatory: An insurance company properly and frequently, when it does business with far and distant points, where the facilities of advice are imperfect, slow, and uncertain and the company's knowledge of the amount actually at risk uncertain, protects itself from excessive loss by reinsuring flat, as well as on the excess of certain amounts. In such a case the
600 original insuring company, having secured both flat reinsurance and reinsurance on excess, on open contract policies or directly, it might happen, in the event of a loss less than the excess insurance occurring before a cargo has been completed, that such flat reinsurance may absorb, unintentionally and unknowingly to the company insured, the entire amount intended to be the risk of the reinsured company. In such a case the reinsurers flat would be the first and only ones liable for said loss, to the exclusion of reinsurers on the stated excess.

In answer to the tenth interrogatory: I think I can answer as to that that my answers to the previous interrogatories are so comprehensive that they cover the ground, and I have nothing further to say.

THOMAS C. HAND.

Sworn and subscribed to before me this twenty-ninth day of June, A. D. 1885.

[SEAL.] CHARLES GIBBONS, JR.,
*U. S. Commissioner.*

I, Charles Gibbons, Jr., a United States commissioner, residing in the city of Philadelphia, hereby certify that on the twenty-ninth day of June, 1885, before me personally appeared the aforesaid Henry D. Sherrerd and Thomas C. Hand, who being by me severally and separately examined, and the annexed interrogatories having been read to them, their respective answers thereto have been herewith reduced to writing, and are annexed herewith and returned to the said the United States circuit court for the eastern district of Louisiana, for the purpose of being read in evidence on the trial of this cause, together with the aforesaid interrogatories and the original commission.

[SEAL.] CHARLES GIBBONS, JR.,
*United States Commissioner.*

601 *Documents and Writings Offered by Defendants, as per Master's Certificate.*

A. Filed March 11th, '85.

(Page 184.)

PHILADELPHIA, —— —, 18—.

Reinsurance is wanted by the Insurance Co. of North America — —— on board of the ——, at and from —— to ——.

This policy is to be subject to such risks, valuations, conditions, and mode of settlement as are or may be taken by the said Insurance Company of North America, notwithstanding anything to the contrary in the within policy, and payment of loss to be made at the same time.

Premium, —— per cent., less —— per cent.

When and where built, ——; number of decks, ——; tonnage, ——; rate, ——.

—— ——, *Secretary.*

To the —— ——.

B[4]. Filed March 12th, 1885.

PHILADELPHIA, —— —, 18—.

To the —— ——:

Reinsure for the Insurance Company of the State of Pennsylvania —— dollars on ——, per ——, at and from ——; subject to
602 such risks, valuations, and conditions as are or may be taken by the said "The Insurance Company of the State of Pennsylvania," notwithstanding anything to the contrary in the policy of reinsurance, and payment of loss to be made at the same time and manner as paid by them.

Premium, —— per cent.

B[5]. Filed M'ch 12, '85.

Reinsurance is wanted by Mather & Co., agents for the British and Foreign Marine Ins. Co. (Limited), for $—— on board ——, at and from ——.

This policy is to be subject to such risks, valuations, and conditions as are — may be taken by the said British and Foreign Marine Insurance Co. (Limited) at their Philadelphia agency, notwithstanding anything to the contrary in the body of this policy, and payment of loss to be made at the same time.

☞To remain open until particulars are given in.

Premium, ——.

Binding—

—— ——, *President.*

—— ——, *Agent.*

Philadelphia, —— —, 18—.

603 & 604 B7. Filed M'ch 12, '85.

*Hibernia Insurance Company of New Orleans, La., in Account with Insurance Company of North America, Philadelphia, Pa.*

DR. CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Hibernia Ins'ce Co'p'y. | | | | *Contra.* | | |
| 1884. | | | | 1884. | | | |
| June 24 | Reins'ce claim, "H. G. Johnson" | | 229 24 | June 24 | By salvage, "Etimologia" | | 750 12 |
| " " | Do. "Batavia" | | 1,181 96 | July 8 | " " "Arthur C. Wade" | | 733 62 |
| July 29 | Claims reinsurers— | | | Aug. 1 | " balance | | 448 12 |
| | "Sokoto" | 341 74 | | | | | |
| | "Mentmore" | 82 53 | | | | | |
| | "Edgar" | 9 82 | | | | | |
| | "Vaderland" | 31 27 | | | | | |
| | "City of New York" | 51 80 | | | | | |
| | "Ben Voerlech" | 3 50 | | | | | |
| | | | 520 66 | | | | |
| | | | 1,931 86 | | | | 1,931 86 |
| 1884. | | | | | | | |
| Aug. 1 | To balance | | 448 12 | | Since the above account was rendered the following salvages have been received, and the Hibernia Ins. Co. duly advised of the same: | | |
| | | | | 1884. | | | |
| | | | | Oct. 29 | By salvage, "Swallow" | | 14 52 |
| | | | | Nov. 6 | " " "Arthur C. Wade" | | 223 95 |
| | | | | | " balance | | 209 65 |
| | | | 448 12 | | | | 448 12 |
| 1884. | | | | | | | |
| Nov. 11 | To balance | | 209 65 | | | | |

605 & 606 B[8]. Filed March 12, '85.

*Marine Account Current.*

DR. Insurance Co. of North America in acc't with Hibernia Ins'ce Co., New Orleans, La.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1884. | | | 1884. | | | |
| Nov. 11 | To balance ac. sent this day | 209 65 | Dec. 4 | By salvage Arthur C. Wade | | 223 95 |
| Dec. 17 | " p. a. "Lord Wolsey" | 25 94 | 1885. | | | |
| " | " p. a. "Thos. Lord" | 66 52 | Jan'y 5 | " salvage do. final balance | | 223 96 |
| 24 | " g. & p. a. "Sportsman" | 212 66 | M'ch 12 | " balance | | 271 87 |
| | " proportion of expenses "Sportsman" | 16 38 | | | | |
| 1885. | | | | | | |
| Feb'y 17 | " g. a. "Dupale" | 3 09 | | | | |
| " | " g. a. "Panama" | 64 71 | | | | |
| 28 | " g. a. "Sella" | 120 83 | | | | |
| | | 719 78 | | | | 719 78 |
| 1885. | | | | | | |
| M'ch 12 | To balance | 271 87 | | | | |

607 D. Filed March 11, '85.

Insurance Company of North America, No. 232 Walnut street.

PHILADELPHIA, —— —, 188–.

To the —— ——:

Particulars of reinsurance.

Original applicat*ed* dated —— —, 188–; on board of the ——, at and from ——, on ——, $——, @ —— %, less ——, $——.

C. Filed M'ch 11, '85.

Office of the Insurance Co. of North America, No. 232 Walnut street, Philadelphia.

To the —— ——:

Please enter on open policy made for this company the following vessels:

608 *Objections to Master's Proposed Report. Filed Oct. 19th,* 1885.

United States Circuit Court for the Fifth Circuit and Eastern Dist. of La.

HIBERNIA INSURANCE COMPANY *vs.* INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

The undersigned, solicitor for respondents in the above-entitled cause, reserving unto himself, as heretofore notified by him to the master, the right to apply hereafter to the honorable the circuit judge for a modification and extension, on account of insufficient time through illness, of the rules of equity practice, in so far as to be allowed to extend, amplify, add to, or alter or amend, in his exceptions to be hereafter filed before the court within the 30 days' rule, his objections herein made before the master previous to the filing of his report, and further reserving his right to test the power of a master to compel a solicitor during vacation time to examine a proposed report and make during said time objections thereto, if any he have, now proceeds respectfully to submit on behalf of said respondents the objections following to the report proposed to be presented to this court in the above-entitled cause by the master, A. G. Brice, as a proper determination of the matters in controversy between the parties hereinabove named.

609 1st. That the master has not furnished with his proposed report, though requested by the undersigned, the minutes of

the proceedings held and of the evidence adduced before him, and that the said minutes are necessary and would show the whole of the evidence introduced by both parties and considered by the master, both documentary and verbal, as well as the requests made by the undersigned and admissions made by complainants' solicitor, none of which now appear of record as made, particularly the request of the undersigned that the admission made voluntarily and spontaneously before the master on the 12th March, 1885, at the closing of the evidence at Philadelphia, in the presence of the president, vice-president, and the undersigned, solicitor of respondents, that after an examination of the books of the company and the testimony adduced in the case there was not the slightest ground for a charge of fraud, and that the company was vindicated in that respect be noted and referred to by the master in his report, and also the full admission of complainants' solicitor made here before the master and at the request of the undersigned in order to avoid further delay, not only that respondents paid certain claims for losses for which no special proof had been made upon due proof of loss presented by them to complainants, but, further, that Exhibit B[7] offered by respondents to show a balance due them of $209.65 at that date—12 March, 1885—by complainants for losses not yet reimbursed to them was wholly correct and due as stated therein, and, as the master added, that there was no dispute as to accounts, and would show that a large number of the applications for rein-
610 surance of respondents in hand of complainants have not been produced, though called for and promised to be attached to the particulars of reinsurance.

2nd. That in the "facts," at p. 2 of the report, the evidence does not show, as stated by the master, that, "to compete profitably" "and to meet the wants of customers, respondent was in the habit of accepting the whole amount of the risk any customer applied for on a vessel," but that, on the contrary, the evidence shows that respondent only accepted good risks, such as any good and competent marine company in the United States or elsewhere might or would take, and that not a single loss occurred in their transactions with complainants the risks of which would not have been accepted by any company.

3rd. That the definition of "usual line," at p. 2, by the master is not sufficient and may mislead, as, in fact, "usual line" means not an amount fixed absolutely as a limit to itself by a company to carry or have at risk on any one vessel at any one time, but, rather, means an amount not governed by an inflexible rule, but varying very frequently and even almost constantly, according to the vessel, the crew, the cargo, the nature of the voyage, the seasons, &c., as the evidence abundantly shows; and, moreover, the evidence shows that respondents in their large business have no absolute and invariable line of risks, they varying and forming their judgment as each case occurs.

4th. That respondents did not, as erroneously stated at p. 3, make with various reinsuring companies only "open-policy" con-
611 tracts, but that the necessity of their large business often com-

pelled them to reinsure flat as well as on an excess, and that it is not correct to say that all "open policies" are necessarily based on a reinsurance on an excess, and these policies, though "open," may as well be made flat up to any amount that may be fixed beforehand between the reinsured and reinsurer, the term flat meaning a fixed, positive sum, not depending on an excess over the usual amount of risk held by the reinsured, but payable by the reinsured, without prorating with excess reinsurers, at once, provided there be a loss to that extent.

5th. That the report, at p. 4, previous to the quoting of letters of 6th and 11th Oct., 1880, on the question of the result of the conference between Marshall J. Smith and the Hibernia Co., does not refer to nor give due and proper weight and effect as it should have to the evidence of Chas. Platt, Jr., concerning the preliminaries and interests and motives of both himself and Smith & Co., as stated in his examination, at pp. 207, 213, 214, 215, 216, 217, 218, 219, 220, 223, *et seq.*, and 229, 231, and, in fact, to the whole of the testimony of said witness, who was the witness of complainants themselves.

6th. That the report is erroneous in using, at p. 7, the word "usual," which does not exist in the original letter A 3, of 11th October, 1880, in the following quoted line: "Of course all risks accepted by me will be such that the Ins. Co. of North America carries their 'usual' line on;" that the testimony of Wm. A. Platt, p. 202, referred to at page 6 of the report, does not justify the deduction therefrom—quite the contrary—that neither the letter of Smith & Co. to Chas. Platt, Jr., of 6th Oct., 1880, nor that of Chas. Platt, Jr.,
612 to Smith & Co. of 11th Oct., 1880, were written for or on behalf of respondents, nor did they bind respondents as principals in any manner, as erroneously inferred and maintained in the report at pp. 6, 7, 8, said letters having been merely written between the parties, Smith & Co. & Platt, Jr., for their mutual benefit and for the benefit of complainants, who desired to extend their own business, and neither of said letters being shown to have been communicated to respondents, whose only action in the matter was to have allowed Chas. Platt, Jr., to obtain the agency and business of the Hibernia in connection with Smith & Co., also agents of the Hibernia, by enabling said Platt, Jr., to secure for his principals respondents' patronage in its large reinsurance business, following which promise of patronage by respondents the Hibernia issued to Chas. Platt, Jr., to carry out and use this advantage it had thus gained, policy No. 268, of date Oct. 13th, 1880, the whole as shown by the two letters themselves, by the terms and conditions and especially the limitation clause on the endorsement of said policy, which has always been in the hands and custody of said Platt, Jr., by the evidence of said Charles Platt, Jr., from p. 207 to p. 233, by the evidence of Wm. A. Platt, 2nd vice-president and marine clerk during that whole time, p —, and by the evidence of Chas. Platt, president for 12 years and in the company of respondents since 25 years, p. —.

7th. That the report is erroneous in its construction, at pp. 8 & 9, of certain expressions in the evidence of Chas. Platt, Jr., and in the

inference therefrom, merely parts of said testimony being given and not the whole of it, which, when read in its entirety, shows
613 the very reverse of the master's conclusions; and the report is also especially erroneous in stating, at pp. 8 & 9, that the word "usual" was used, and also in alleging that the statements of Chas. Platt, Jr., therein set forth were made in the presence and hearing of the president and vice-president and are not disputed, 1st, because there was no need of disputing what was not admitted but in fact denied by the witness, Platt, Jr., and, 2nd, because the vice-president, Wm. A. Platt, continuing his cross-examination at p. 239 to p. 257, immediately after the examination of Chas. Platt, Jr., most emphatically and completely maintained the position and statements of Chas. Platt, Jr., who was and is a marine insurance agent having a totally separate and distant business and office and not having then, more than now, any connection whatever with respondents except as it may occur in the line as insurance agent, and who states that respondents had no interest of any kind in policy No. 268, more than any ordinary reinsured Co. has in the business of the company reinsuring it, and that respondents had nothing at all to do with the issuing of said policy nor with its being carried out, more than to know that Chas. Platt, Jr., had the authority under it to bind the Hibernia Co., his principal; and to the same effect is the testimony of Chas. Platt, president of respondent Co., also taken after that of Chas. Platt, Jr., from page 260 to the end thereof, at page 284; and moreover, objection on behalf of respondents was made that no letters of Smith & Co. nor of C. Platt, Jr., nor doings, sayings, etc., of theirs could be used against respondents unless their privity therewith should be shown, and this was never shown, but the contrary was established; and
614 another objection also made was that no change, addition, or alteration by parol evidence should be made against respondents in the policies alleged against them, said documents being full proof of their own contents & of the obligations of each party under the terms thereof.

8th. That the report at p. 9 is totally erroneous, 1st, in inferring that which is not only not proven in the least but which is gratuitously assumed by the master as a fact against direct evidence to the contrary—that is, that respondents had seen and approved the letters of 6th and 11th of October, 1880; and, 2nd, in assuming without proof that the object of policy No. 268 was to reinsure the excess lines that the Ins. Co. of North America usually carried, when the truth is that said policy does not in its terms even mention or hint at the words "excess lines," and when, also, this totally untenable inference of the master is contradicted by all the witnesses who knew anything about the subject; and, 3d, in assuming against the terms of the policy itself and against the evidence that said policy No. 268, though nominally made with Chas. Platt, Jr., was to reinsure respondent only on risks in excess of its usual lines; and, 4th, in its statement that Chas. Platt, Jr., was acting for and representing defendants (pp. 9 & 10 of report). All of which statements and con-

clusions are not justified in the least either by the contracts, the testimony, or the documentary evidence.

9th. Even admitting the alleged materiality of the alleged representations and of the alleged obligations thereunder of respondents (which they emphatically deny) under the letter of 11th
615 Oct., 1880, concerning policy 268, nothing in said letter nor in policy 268 which grew out of it justifies the master to conclude that the intention of the parties was to insure an excess above any definite amount or usual lines, no such expression being used either in the letter or in the policy, and the policy being a contract and clear and unambiguous in its language nothing can be added to it by implication or otherwise to change, alter, or vary it, and respondents have made formal objection to any such illegal alteration or inference; nor is the master's conclusion justified that 268 is the same as 277, 296, 297, and 306, the language and terms of the four said last policies being far different from those of 268, the four last being open policies on a stipulated excess made by complainants to respondents themselves directly and attaching and operative *ipso facto*—policy 277, from Spanish Main to ports in United States, whenever respondents had at risk an excess over $60,000; policy 296, East Indies to United States, whenever respondents had at risk an excess over $50,000; policy 297, West Indies to ports in the United States, whenever respondents had at risk an excess over $50,000, and policy 306, from ports in the United States to ports in Europe, on cotton only, whenever respondents had at risk an excess over $70,000, whereas policy 268 in its terms is totally different and distinct, being issued by Hibernia Co. to C. Platt, Jr., at request of Smith & Co. and C. Platt, Jr., it, though an open policy, not attaching instantly nor operating by itself in the event of any stated condition nor after any excess on any stated amount had been reached, but necessitating for its becoming operative a special application made by respondents,
616 directly or through their several agents in other cities, to Chas. Platt, Jr., as agent of complainants, for reinsurance to an amount specially stated in such application, the reinsurance under 268 being thus necessarily special, though it could be made at option either flat—that is to say, absolute or unconditional—or upon an excess over any stated or fixed amount. The terms of excess or of usual lines are not inserted in said 268 and it is more general and less restrictive, as it applies at and from ports in the United States and foreign ports, thus being clearly made and intended for more general purposes than the four last-named policies; and also the reports of shipments and risks taken thereunder are to be made by Platt, Jr., to Smith & Co., the Hibernia's managers, through whose efforts, combined with those of Platt, Jr., part of the reinsuring business of respondents was given to complainants, so that they could use their unemployed capital. (See whole testimony of Chas. Platt, Jr., and the letters exchanged between him and Smith & Co.)

And the master is also in error in his statement connecting as one undivided act and holding respondents under the several notes

attached to the policies reducing the amount of reinsurable risk to $5,000, the contrary being distinctly stated by the only witness to that effect, Chas. Platt, Jr., at p. 219, and respondents not being shown, directly or indirectly, to be connected with nor interested in the charge made at request of the Hibernia; nor is the master justified by the evidence in his finding, at pp. 10 & 11, that "these facts lead me to believe the respondent was to retain its usual line when it reinsured with complainant, and the risks complain-
617 ant was to underwrite were only such as it (respondent) retained its usual line on."

10th. The master stated erroneously in 1st, at p. 11, that the "usual line of respondents, as appears from the evidence, is $50,000; that generally they reinsured the excess of $50,000, and that this sum therefore was its usual line to be carried in all cases on risks with complainants under the contracts." The evidence shows quite the contrary, especially of the uncontradicted testimony of Wm. A. Platt, at p. 178 to p. 190 and from page 190 to p. 197 and to p. 203 and from p. 239 to p. 257, and also in the uncontradicted testimony of Chas. Platt, president of respondent Co., from p. 258 to p. 283. This unwarrantable assumption by the master of an absolute, fixed, invariable line for the sole purpose of securing such a small reinsurance as the Hibernia's would be most unbusinesslike and contrary to all ordinary rules of marine insurance, and nothing but the most direct and positive and convincing evidence to that effect could justify the finding of such a condition of contract as a matter of fact had fully proven; and to this effect we have the evidence even of Prevost, secretary and business manager of complainants, and of Fourchy and Chalaron, witnesses for complainants, all confirming, in effect, the statements of Charles Platt, president, and of Wm. A. Platt, V. president and marine manager, and of the five presidents of five large marine companies of Boston, New York, and Philadelphia, taken under commissions, that risks are constantly varying in amounts for a number of ever-changing causes and circumstances, and that there is not, nor can there be, an absolute, immutable, unvarying sum at risk which can
618 ever be called a usual line for any company for all vessels, at all seasons, on all voyages, &c., equally and always. The very statement of the master's starting-point, of an invariable, usual line of $50,000, which he attributes to respondents, under the penalty of forfeiture of reinsurance on every vessel at all times, from or to any ports, on all cargoes, is contrary and repugnant to the simplest business notions and demonstrates forcibly its utter and intrinsic untenability; and the master states erroneously, at 2nd of p. 11, that policy 268 would attach in favor of respondents on vessels and cargo only where the amount of the risks taken by respondents on any one vessel exceeded $50,000, a finding of fact entirely inferential, not substantiated by any evidence, when, on the contrary, the whole evidence, both parol and documentary, adduced in this cause, as well as the most ordinary and simple and businesslike construction and interpretation of clear and explicit written contract, needing no outside evidence to explain its mean-

ing, point out without doubt that policy 268 has no such restrictions imposed upon it as those contained in 277, 296, 297, and 306, and that said 268 covered as to amount all risks below $50,000, the higher risks being provided for, said risks being very numerous and needing some provision, as seen in testimony of Wm. A. Platt; and, as to ports, it covered those ports which the Hibernia was seeking to reach, and which were not mentioned in the four last special policies, the Hibernia taking and receiving without grumbling or complaining its premiums during 3 years on numberless applications for reinsurance made specially and accepted under 268, the application and particulars all coming to the Hibernia through its
619 agent, C. Platt, Jr., and necessarily demonstrating on their face, at least all those made on excess, which were numerous, that the risks carried by respondents were very frequently on sums below, and far below, $50,000.

11th. The master's report, from p. 12 to the end of 1st paragraph of p. 17, consists in noticing, at p. 12, an application to reduce respondents' line on ship Tonawanda, and quotes thereon letter to Smith & Co. of March 10th, 1884, and in noticing letter of March 2nd, 1883, of Smith & Co. to C. Platt, Jr., asking him to notify complainants whenever respondents reduced their lines, to which Platt, Jr., answers, in letter of March 7th, 1883, that he could not do so, having no facilities nor any information from respondents therefor, and in noticing letter of 11th April, 1881, alleged to have been sent by respondents to complainants for a policy covering an excess of $60,000, which application resulted in policy 277; noticing on 9th and 10th November, 1881, respondent is alleged to have sent to complainants through Platt, Jr., 2 other applications for reinsurance policies, one for ports from East Indies and the other from ports in the West Indies to the United States, to apply on excess over $50,000, resulting in policies 296 and 297, forwarded to respondents through C. Platt, Jr.; noticing that on August 26th, 1882, respondents sent to complainants through C. Platt, Jr., an application for policy on cotton from United States to Europe, on excess over $70,000, resulting in policy 306; all of which is noticed by the master to show, 1st, that those contracts were made through C. Platt, Jr., acting for respondents; 2nd, to show that in all those contracts and letters upon which they were based respondent was to carry its usual
620 lines as specified in said contracts; 3rd, to show that those policies attached on the excess stated therein up to $10,000, provided the risks were to and from the ports mentioned, and the master concludes that when the two conditions of usual lines and ports mentioned concur these policies apply, because, says he, otherwise respondent could have reinsured on vessels of every character, seaworthy or not and in a most hazardous manner, and could have reinsured the whole risk to save itself from loss, "which was never contemplated by the contracts;" and, adds the master, as all the policies and propositions for policies with complainants appear to be made through C. Platt, Jr., and copies of all applications and notices were transmitted to Smith & Co., who appear to have acted for complainants, and all demands for losses on risks reported were

sent by respondents through Platt, Jr., to complainants, it appears, therefore, that C. Platt, Jr., acted as agent of respondents & Smith & Co. in New Orleans as agent of complainants; and as a further confirmation of this finding a demand was made on Platt, Jr., to report particulars of risks as soon as taken, and this he could not do, as per his letters to Smith & Co. of Sept. 15th, 1883, and of June 15th, 1883, and quotes letter of June, 1883, that from July 1st, 1883, amount of reinsurance by Hibernia will be reduced to $5,000, as requested by letter of Smith & Co. of 9th June, 1883, showing, concludes the master, that C. Platt, Jr., acted for respondents and Smith & Co. for complainants, and further aids and supports this conclusion by
621 the fact that complainant, on Nov. 23rd, 1883, notified respondents through Platt, Jr., that it wished all its open policies with respondents cancelled, all of this satisfying the master that the business was for respondent, and that all that Platt, Jr., did was with its knowledge, approval, and direction.

First noticing that letters of 11th April, 1881, and of Sept. 15th, 1883, are not in the record and do not appear to have ever been filed, and admitting, though not having them before him, the applications through C. Platt, Jr., by respondents to Hibernia (but not the alleged letters, which were never sent and are not in evidence) for open policies on excess Nos. 277, 296, 297, & 306, and admitting the letters on record exchanged between Smith & Co. & Platt, Jr., which have been cited and from which extracts have been given in the report, it does not follow, as the master erroneously infers and concludes, that Platt, Jr., was the agent of respondents and acting for them and binding them by all his acts, doings, and sayings; on the contrary, Chas. Platt., Jr., Wm. A. Platt, and Chas. Platt, pres'd't, all concur in saying that such was not the case; that the respondents had no interest whatever in the matter and did not correspond nor interfere concerning it, nor were they consulted, nor were they shown letters, nor did they give advice, approbation, or assent to any of the acts of either the Hibernia or Smith & Co. or C. Platt, Jr., concerning this reinsurance business except when and in so far as their own interests as reinsured were concerned, and then strictly for their own (respondents') interests; that respondents, merely as a favor to C. Pratt, Jr., and to his friends
622 in New Orleans, for the brokerage fees that they might make out of it and for the premiums that might accrue to C. Platt Jr.'s principal, the Hibernia, gave them a share of their large business and extensive patronage. The testimony explains fully well and satisfactorily why all the business was conducted through Platt, Jr., it being because of its convenience, its simplicity, the advantage it might bring in brokerage fees to Platt, Jr., and because, since the issuing of policy 268, C. Platt, Jr., had been, with his friends, Smith & Co., the open and recognized agent of the Hibernia in all this reinsurance business allowed and promoted by respondents at the very request of the Hibernia made through Smith & Co. & Platt, Jr., both agents of the Hibernia, and for those reasons it had been customary and was very natural that all communication should pass through the hands of Platt, Jr., not because he was respondents' agent, but

because, on the contrary, he was complainants' agent. When respondents wished direct open policies on excess they so requested and obtained them in their own name and not under a cover—never needed. In fact, an agent of the Hibernia was needed in a policy such as 268, where no excess was stipulated as being the beginning of an *ipso facto* risk, and where, moreover, a direct application for reinsurance was required to effect the same and to render the policy operative. The letters quoted by the master, as well as those not quoted by him and which have been overlooked, to wit., Aug. 28th, 1882, Sept. 4th, 1882, Sept. 8th, 1882, Sept. 14th, 1882, Sept. 15th, 1882, June 18th, 1883, June 9th, 1883, and Nov. 23rd, 1883,
623 as well as all the other letters filed herein, instead of leaving in the least to the inference that Platt, Jr., was the respondents' agent, lead, in fact, and when taken either separately or altogether, to the contrary inference, that he was the agent of the Hibernia, which latter, even in the matter of the cotton policy, could not obtain from respondents that they deviate from their policy of reinsuring not lower than a certain sum, say $5,000; and respondents, furthermore, not allowing the Hibernia the privilege of lowering its $10,000 reinsurance on excess of $70,000 *pro rata* of the lowering, so far as the respondents might lower their own risks, clearly show*ing* that at that time the Hibernia did not have the pretension they have now, that because their reinsurance policies attach over $50,000 or $60,000 or $70,000 therefore the reinsured respondents must carry the whole amount to destination and can never reinsure with other companies to reduce their risks, and finally the letter of Platt, Jr., to Smith & Co., of Nov. 23rd, 1883, in which he states, " I have given notice to Ins. Co. of N. A. that the Hibernia desires to cancel their open policies in accordance with their terms from this date, and I will accept no new business from to-day," which letter clearly indicates that he gave notice to the respondents and acted, not for the latter, but as agent and representative of the Hibernia and at their request. The letter of June 9th, 1883, from Smith & Co. to Platt, Jr., is also *the* the same effect, and the whole evidence, even that of Prevost, secretary of complainants, in his cross-examination,
624 shows that the whole brokerage fees were paid to Smith & Co. and Platt, Jr., out of the premiums earned by the Hibernia, and which they were allowed to keep, and it follows necessarily that both Smith & Co. & Platt, Jr., were the Hibernia's brokers and representatives and not those of respondents. As the testimony on this is direct, positive, and uncontradicted it should be held as decisive of the question; and in not giving proper consideration, weight, and effect to the evidence adduced the master is wholly in error in his decision on that point of agency, he assuming as facts that which was never proved, wholly neglecting and overlooking the facts proven in favor of respondents on the questions at issue, the whole argumentation of the master begging the question, presuming fraud as a close —, a matter which the law forbids to presume in any manner, and which the law of ordinary business equally forbids to be and which cannot be presumed in a respectable and flourishing insurance company, referring, as proofs of a fact, to

acts of complainants which, as to defendants, could never be proved against them, as one cannot manufacture his own evidence to suit himself, and said argumentation being altogether groundless, erroneous, incorrect, and not flowing from the premises and the true state of facts as developed by the evidence.

12th. From the beginning of the 2nd paragraph, at p. 17 of the report, until the last paragraph, at p. 22, the master states, erroneously we think and assert, that complainants inquired into and knew of respondents carrying on vessels lines of risk far below
625 the alleged and pretended usual line of $50,000, in which cases losses had been paid by complainants, and he puts to himself the question whether respondents had a right so to do under the terms of the contracts, and quotes several cases as to material misrepresentation, and interprets the contracts in this manner: that, according to him, the complainants were bound on the marine risks only where respondents carried their usual alleged usual lines, which he assumes to be invariably $50,000, and that complainants were not bound whenever respondents failed to carry $50,000 unless previous notice of such fact was given and the risk, after such notice, accepted; and he quotes authorities on misrepresentation, even when not fraudulent, up to the beginning of last paragraph of p. 22.

The first error of the master is in misinterpreting the several contracts, which are clearly and easily understood in their terms and are not really susceptible of or amenable to any interpretation by means of outside evidence, none such being necessary, and the grave error of the master consists in this misinterpretation and want of consideration of the whole evidence and in erroneously considering and commenting and passing upon part of the evidence and entirely overlooking the rest thereof in determining as a matter of fact that policy 268 was that of respondents; that Platt, Jr., was their agent; that their so-called usual line was positively and invariably on all vessels, voyages, cargoes, &c., exactly $50,000, and that through Platt, Jr., and Smith & Co. they had so informed complainants, and that therefore, in all cases where respondents
626 had taken risks below $50,000 and had reinsured under 268, they had done so without right under the terms of 268, and, having misrepresented the facts, the risks were never attached, and they must return to complainants the several amounts of losses paid by them in such cases, less the premiums. The contracts are each separate and distinct, and must be considered each one by itself.

There is no reason in the world to club them together in one mass and then draw forced and unnatural inferences therefrom. Policy 268 was made general in its terms, from and to all ports; was not limited as to amounts nor as to the method of reinsuring, whether flat or on a stated excess; was not an open self-operating policy, but could only be put in force by specific application for reinsurance in each and every case thereunder, whether the application was flat or whether on an excess; was issued to Chas. Platt, Jr., a marine broker, by the Hibernia after conference with its friends and agents here, Smith & Co., for the mutual benefit of the Hibernia, Smith & Co., & Platt, Jr., all the brokerage being paid by the Hi-

bernia, as well proven. It appears, though, that the Hibernia, through Smith & Co., its agents here, limited Platt, Jr., to reinsurance with respondents, but that was for its own convenience or security, if it did not wish to extend its operations further, and this limitation for its own & sole benefit could have been ended at any time by it and its agent, Platt, Jr., allowed to reinsure other companies to a larger amount, and with all this respondents had no connection, interest, nor even knowledge, as shown in evidence. Why,
627 then, should the master call Chas. Platt, Jr., the agent of respondents and not the agent of the Hibernia, as he really was, any more than he would or could call agents of respondents the numerous other companies in Pennsylvania, New Jersey, New York, Massachusetts, and elsewhere which did and do yet for respondents the same identical business of reinsuring them as did the Hibernia through Platt, Jr.

The facts do not warrant any such distinction or conclusion of the master. As to a knowledge of the Hibernia, from the very inception in 1880 up to the very middle of 1883, that respondents very frequently carried lines of less than $50,000, their very business knowledge should have taught them this, and they cannot now be heard to plead their own ignorance, if ignorance it ever was. An insurance Co. takes what good business it finds, and if the amount of risk is too high it reinsures. As expert in the business the Hibernia should have known, and they did know, and were informed, as a matter of fact, through both of their agents, Smith & Co. & C. Platt, Jr., that under policy 268 they had reinsured respondents on lines carried by them far below the alleged standard line of $50,000, say an excess of $45,000, of $40,000, of $35,000, of $30,000, of $25,000, and even less. This is conclusively shown & without doubt by the very applications for reinsurance and particulars thereof, all under 268, sent to them by their agent, Platt, Jr., through their other agents, Smith & Co., and the Hibernia never raised a voice nor interposed an objection until it happened that they made less money than they had anticipated out of the three years' transactions, though the evidence shows that complainants received from respondents as much and even more premiums than they paid losses. I refer the master
628 to, amongst others, the steamer Avlona, X 2, policy 268, on excess over $25,000, cargo, Oct. 18th, 1881; bark Impi, X 5, policy 268, on excess over $30,000, wheat, Aug. 28, 1882; ship Obi, X 1, policy 268, on excess over $25,000, sugar, June 11th, 1881; and, in fact, if complainants had offered in evidence all their particulars of reinsurance under policy 268, it would be found that it is clearly demonstrated that in innumerable cases complainants had knowledge and information, through Smith & Co., through C. Platt, Jr., through the applications for reinsurance and the particulars sent to them in so many cases under policy 268, and especially through the evidence of Wm. A. Platt, 2nd vice-president and marine clerk, taken from the books of respondents before the master, and, through the testimony of the fire — marine insurance presidents taken under commissions, that complainant could not help knowing and must have known and could not infer otherwise from the above-cited reinsur-

ances on less than excess over $50,000 that respondents insured under policy 268 the special applications, all those risks which, either owing to their being less than $50,000, $60,000, or $70,000 or owing to their not being on vessels to or from ports covered by the open policies which attached *ipso facto* and were self-operative, could not be reinsured otherwise with complainants, and of this the latter could not help being and were cognizant and assenting thereto; and it thus appears that the alleged usual lines of respondents did vary as those of any other company in the world, and that the Hibernia knew it.

629 The other policies, 277, 296, 297, and 306, are self-explanatory, being issued directly to the respondents, and were also self-operative by the mere fact of respondents carrying on any one vessel over $50,000 or $60,000 or $70,000 on the voyages specified therein. They did not cover so much ground as policy 268, and only required of the respondents to notify complainants, through their chosen agent, Chas. Platt, Jr., of the probable amount of total risk, to be followed as soon thereafter as possible by the particulars.

The 2nd error of the master is in assuming that respondents did not fulfil their obligations under the contracts to the letter, when the uncontradicted evidence clearly shows that they did fulfil honestly and completely all their obligations as a reinsured company under the several contracts cited; that they made true any proper representations, gave the proper and true particulars and notices, paid the proper premiums, and settled all losses for the best advantage of all parties concerned, and especially is it proven by the testimony that they did in effect and in every particular carry at their own risk their usual line on each vessel in each particular voyage, except the two cases of the Budstikken and the Adele, which were fully explained, having happened by accident, and which, being stated in the interrogatories to the most expert marine insurers of New York, Boston, & Philadelphia, were considered as cases that might happen accidentally to any company, and this carrying of their usual line in every instance on each vessel is shown specially from respondents' books examined by the master, in

630 the testimony of Wm. A. Platt, at p. —, and of Chas. Platt, president, at p.—, and so much was the good faith and truthfulness and correctness of respondents then seen and made apparent that near the last day of the examination, in presence of the president and vice-president aforesaid and of the undersigned solicitor, Mr. Sansum, solicitor for complainants, deemed it his duty to call the especial attention of the master to the fact that he was satisfied there was no fraud that could be charged against the respondents; that they had shown the fairest and most honest dealings and had kept their books in the clearest and most correct manner possible, which statements the master is now called upon by the undersigned to make explicitly in his formal report to the court, it being not set forth in his proposed report.

The 3d error of the master is one of law, when he assumes that respondents were bound in law and in equity under policy No. 268

to carry a usual line, which line, though they did actually carry with the Hibernia, they maintain they are not obliged to carry at all, they pretending and maintaining, as a matter of right, that they may reinsure at pleasure, even up to the whole of their risk, provided there be no fraud, and on the excess policies that they may reinsure with other companies below the excess without vitiating the reinsurance above said stated excess policies. As to the law quoted by the master it is quoted in error, in that it is wholly inapplicable to the facts of this cause.

13th. The master, in his report, from p. 23, "Usage as applicable to contracts," to p. 27, refers to authorities on the subject, and
631 refers to testimony of Fourchy and Chalaron, taken on behalf of complainants, to the effect that they would not pay a loss reinsured where the reinsured carried no risk; states that this is the custom and that it is not disputed by any contradictory evidence; that he does not find evidence to sustain respondents' view that Chas. Platt, Jr., was the agent of complainants, and that his knowledge was their knowledge; argues, from the last paragraph of p. 24 to p. 27, in an endeavor to show that Chas. Platt, Jr., could not be and was not the agent of the Hibernia, stating the proposition as leading to an absurdity, and concludes by asserting that "the evidence makes it very clear that policy 268 was made for the benefit of respondents only."

Respondents respectfully suggest that the master is in error on the 1st proposition, as the question to be decided is not one of usage, but clearly and solely one of interpretation and effect of contracts, and therefore the law quoted finds no application, and that, if it even were considered a question of usage, the master is yet in error in having merely examined the testimony and opinion of Fourchy and Chaleron, witnesses of complainants, and in not having examined, referred to, and given its full and due weight to the pointedly contradictory opinion of five experts, presidents of the largest marine insurances of the leading cities of New York, Boston, and Philadelphia, some of those the neighbors and all the competitors of respondents, to wit, Ransom B. Fuller, pres'd't Boston Marine Ins. Co.; Henry D. Sherrerd, pres'd't of Ins. Co. of the State of Pennsylvania, of Philadelphia; Thos. C. Hand, pres'd't of the Dela-
632 ware Mutual Safety Ins. Co. of Philadelphia; W. J. Comes, pres'd't of the Commercial Mut. Ins. Co. of New York; Ferdinand Motz, pres'd't of the Great Western Marine Ins. Co. of New York, who all state that in the case of the "Obi," put to them in the interrogatories, it would not be reasonable for the Hibernia to think or infer that the respondents carried more than $25,000—say more than $50,000—on that voyage; that it is not customary for companies to bind themselves to an invariable amount as to risks to be carried by them, and as to the payment of a loss in the cited case of the Adele, where it was found that at the time of the loss and by accident the flat reinsurance covered more than was actually on board, they all declared, having been interrogated thereon, that the flat reinsurances properly paid the loss and were so bound. In fact, their evidence, taken under commission, maintains fully

and completely all the points as to usage and interpretation and effect of contracts, &c., asserted by respondents in their defence against the claims of complainants; and this overwhelming testimony as to weight and authority should be held superior to any other produced here of estimable men, it is true, but who never have had such an extended and complete experience.

That the master is in error on the 2nd proposition, that there is no evidence to show Platt, Jr., was agent of complainants, and that his knowledge was theirs, and that he could not be their agent, the reasons for this assignment of error having been fully stated hereinabove, and the undersigned believing and respectfully setting
633 forth that in his judgment the master's argument is unfounded in fact, proves nothing, and defeats itself; and as to the conclusion of the master that the evidence shows that policy 268 was made for the benefit of respondents only the undersigned begs leave to think and assert that in his judgment the whole evidence, properly weighed, shows exactly the contrary, the reasons of this assignment of error having been hereinabove fully set forth.

14th. From the preceding objections, if well founded, the master is necessarily in error, and so he is, in the opinion of the undersigned, on all the special cases from p. 27 to p. 47 of the report, thirteen in number; and, the reasons for each allowance being detailed in each, the undersigned, for brevity, now sets forth that there is error in the master's decisions and finding of amounts in each and every case where he has found for complainants, and he will give a special assignment of error in such cases only as he may think are different from those where the general evidence and the law of contracts are involved.

1st, p. 27 to 29 of report. As to the ship "Obi" the master is in error not only because of the reasons alleged in the preceding objections of the undersigned, but because also he erroneously assumes that due notice was not given to complainants, and that there is no evidence of the intention of respondents so to do, when the contrary is the case, respondents having acted therein in the usual manner and custom of marine companies; and the master is also in error when he claims that under the circumstances of the case respondents should have given complainants reasons for reducing.

634 Steamer Avlona, from p. 29 to 3d of p. 32 of report: The whole statement of the master here is incorrect and erroneous, and especially erroneous in the alleged fact that complainants had no knowledge that the respondents carried less than $50,000 on this voyage, and also in the alleged fact that respondents endeavored to and did obtain reinsurance with the Hibernia after the knowledge of the loss and damage was known to them and published. The evidence discloses no such state of facts, but quite the contrary.

Bark Yorkshire, from p. 32 to p. 33 of report: All error under the foregoing general objections, no special objection being deemed necessary in this case.

Bark Impi, from p. 33 to 34: Same as Yorkshire, the report itself setting forth knowledge of complainants in this special case.

Bark Budstikken, from p. 24 to p. 36 of report: The error of the master is, as usual, his mistaken idea of an absolute and invariable $50,000 risk on every vessel on every voyage on the part of respondents. As to the other facts stated, the evidence discloses that every thing was done and notice given in due course of business and as promptly as possible, and the prorating of the loss was properly made, as well as it could be under the contracts of reinsurance of respondents with complainants; and if it be claimed that the *pro ratum* was not correct the Hibernia, who profited by it, cannot be heard to complain, having no interest; and, moreover, this point having been raised only in argument here and not in Philadelphia, where alone it could have been explained, if *in* error there was, which is denied, it is now too late to make it, complainants being estopped.

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The fact of an accidental non-interest in the risk on the part of respondents had been fully and satisfactorily explained, the position of respondents being supported by the evidence taken under commissions. The loss was due and properly paid by complainants as reinsurers, the master being in error as to the facts and the law in this case.

Steamer Peruvian, from p. 36 to p. 37: Same errors as alleged in Yorkshire above.

Barks Ocean & Skerryvore, from 37 to 9th of p. 38 of report: Same errors as alleged in bark Yorkshire.

Bark Adele, from p. 38 to 10th of p. 40 of report: The statement of the master is erroneous and the facts were fully and correctly stated in the evidence of Wm. A. Platt. The notices and information of loss and all other necessary particulars were duly given at a proper time, as soon as possible, to the reinsuring companies, including complainants.

Barks Etimologia and L. E. Cann, from pp. 40 to 41: Same error as alleged for bark Yorkshire.

Ship Matchless, from p. 41 to 13th of p. 43 of report: This statement is erroneous in fact and in law. The amounts to be paid were duly and properly prorated and paid, both in equity and under the contracts between complainants and respondents; and, even were the prorating improper, it is too late to urge it now, as it should have been urged in Philadelphia and not here merely and for the first time in argument, respondent being taken by surprise after having called on complainants to disclose in Philadelphia all that they wanted to know, the whole source of information being there and there being no means of here proving the correctness of the *pro ratum*. The complainants are therefore estopped from all claim on this ship, if any they really ever had, which is denied, and there is error in the allowance of this claim by the master.

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Ship Adam Simpson, from p. 43 to p. 46: Same errors of the master as alleged for Matchless hereinabove.

15th. There is error in not allowing claim "B 7" of respondents for a balance of $209.65 as in addition to the admission of complainants stated by the master; a further admission was made to save

delay as to the correctness of the claim and as to its being allowed as good and regular and due, this admission being properly in the minutes of the proceedings had before the master.

16th. There was no equity in the claim of complainants nor in the award of the master in their favor, as this suit merely claims repayment of the losses and does not offer a repayment of premiums on the numerous other cases or risks below $50,000 under policy 268, in which there was no loss, and complainants yet keep the premiums, the evidence showing that the total amount of premiums received by complainants is larger than the total amount of the losses paid by them. Complainants will thus become rich at the expense of respondents, who, under the decision of the master, will have run all the risks, whilst complainants, without any risks at all, since all contracts below $50,000 are invalidated by the master, will have reaped all the benefits of the premiums paid without supporting any of the losses.

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17th. One fundamental error of the complainants and the master seems to be that they have assumed erroneously that it is the reinsured who is benefited, whereas the contract is, in its very nature, strictly commutative, *do ut des*, and if some one is benefited specially it is the reinsurer, who cannot leave his capital idle and who is always in search of customers for its employment, such being the law of business.

18th. The master is finally in error, in this, that he has not applied in his findings the law that complainants, in order to recover, must prove their allegations and charges clearly, conclusively, positively, and without the least doubt—a proof that they have not made, the undersigned respectfully contends; and he is furthermore in error in his examination and report as to the questions of fact and of law, in so far as they concern respondents, who have not only successfully, as the undersigned believes, defended themselves against attack, but who have proven affirmatively the allegations of their defence and who are therefore entitled to a dismissal of the bill of complaint and to a judgment in their favor for the balance due them.

Respectfully submitted,

E. SABOURIN,
*Solicitor for Respondents.*

638 *Master's Report. Filed Octo.* 21, 1885.

U. S. Circuit Court in and for the Eastern District of Louisiana. In Equity.

HIBERNIA INSURANCE COMPANY
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

Report.

To the hon. the judge of the United States circuit court in and for the eastern dist. of Louisiana:

In pursuance of a decretal order of this hon. court of the 28th day

of November, 1884, I, the subscriber one of the masters in chancery of this hon. court, proceeded with the hearing of this cause as follows:

The cause was opened at my office, in this city, on the 22d day of January, 1885, and, at request of counsel for both parties, was adjourned to Philadelphia, Penn. On 28th day of Feb'y, 1885, I left for Philadelphia and there entered into a full and complete examination of the books of respondent and examined witnesses, which examination of the books and taking of evidence occupied 17 days. On my return to this city a large amount of evidence was taken and documents examined, as the records and evidence will show. After hearing of arguments on both sides and a careful examination of the documents and evidence produced, do report the facts:

The parties to this suit are engaged in the fire and marine insurance business. The evidence shows the respondents successfully carry on a very large marine business. To *the* compete profitably with other large companies engaged in the same line of busi-
639 ness and to meet the wants of customers respondent was in the habit of accepting the whole amount of the risk any customer applied for on a vessel, although the sum should exceed the amount fixed as the limit the company would carry on any one vessel. The amount fixed as a limit to carry on any one vessel is designated by insurance companies as their "usual line."

In case the risk exceeds the usual line the company, to protect itself, reinsures the excess in other insurance companies. The amount thus reinsured is called the excess of its usual line. In conducting this branch of the business the respondent, it appears, made contracts with various companies, such contracts being denominated "open policies."

Therefore, as explanatory, it may be stated:

1st. The phrase "usual line" is understood among persons engaged in the business of marine insurance to mean the amount of risk the first insuring company deems expedient to carry, and the word "excess," when used in connection with the phrase "usual line," is understood to mean the amount of risk the first insuring company takes in excess of the amount it is willing to carry as its usual line.

It is averred in the bill that the respondent was to carry its usual line in all cases where the complainant took risks. All the contract policies, except 268, filed in this proceeding declare this as a stipulation of the contracts.

Does this stipulation enter into and form part of policy 268?

Previous to 6th Oct., 1880, as appears from the letter marked "A," copied here *in extenso*, that Marshal J. Smith, of New Orleans,
640 La., was to confer with complainant, The Hibernia Ins. Co. of New Orleans, La., on the subject of reinsurance. The conference was held, and the result was that Marshal J. Smith sent the following letter, addressed to Charles Platt, Jr., to wit:

"NEW ORLEANS, *Oct. 6th*, 1880.

DEAR SIR: Our Mr. Smith has returned home and begs to refer to his conversation with you in regard to reinsuring the excess of the North America. We have consulted with the officers of the Hibernia Ins. Co., a branch of which company is under our management, and we propose to take a portion of the general reinsurance of the North America, excepting coastwise risks from New York here, on which business, at present rates, we believe the North America does little. The Hibernia will carry a line of $10,000 on all foreign business of the company at all ports, except from New Orleans the line must be limited to $5,000, as the Hibernia often have a line from their customers, and they may unknowingly double on a vessel. The Hibernia will allow twenty-five per cent. rebate and to you a brokerage of five per cent.

Should you be able to arrange this please notify me at once. The Hibernia Ins. Co. has a capital of $400,000, paid up, is conservative, and we look upon it here as in every way first class for the amount of risk they will insure.

Yours truly, MARSHAL J. SMITH & CO."

(See testimony, p. 202.)

641 On receipt of this letter Charles Platt, Jr., conferred with respondent, and, predicated on what took place between respondent and himself, he wrote Marshal J. Smith & Co. the following letter:

"PHILADELPHIA, *Oct. 11th*, 1880.

Marshal J. Smith, Esq., New Orleans.

DEAR SIR: Your valued favor of 6th inst. is received and I note contents with care. The Ins. Co. of North America, through me, will be glad to enter into the reinsurance arrangement with the Hibernia."

I enclose herewith the policy I had with the Home Ins. Co. of Newark, N. J., which you can take a copy on a Hibernia policy. Make the sum $10,000. Please send me the policy and I can begin at once.

Of course, risks accepted by me will be such that the Ins. Co. of North America carries their line on, and all risks that are bound by me will be held by the company, as it will not do to have any cancellations.

Shall we report all risks to you or to the Hibernia direct? I see no reason why the arrangement should not prove a success, and I will do all I can to make it so. The most of it will be grain and general cargo from Atlantic ports to Europe.

Please return the Home policy. With many thanks and regards from Mr. Picolet, I am,

Yours very truly, CHARLES PLATT, JR."

642 (See testimony, p. 202, document $A^2$.)

Policy 268, dated New Orleans, Oct. 13th, 1880 (marked 5) is the result of these letters and conferences.

Charles Platt, Jr., in his testimony, pp. 213 to 216, says:

"I made arrangement with the Hibernia on the terms named and the authority derived from the Ins. Co. of North America."

The letter just cited of Oct. 11th, '80, says: "Of course, all risks accepted by me will be such that the Ins. Co. of North America carries their line on." On being asked if that statement was predicated on anything that had passed between himself and the Ins. Co. of North America he replied: "Certainly; I did not say it on my own authority." (Testimony, p. 213.)

These statements were made in the presence and hearing of the president and second vice-president of the Ins. Co. of North America, and they are not disputed.

To every contract there must be at least two parties, consent willingly given, an object, and a lawful purpose.

The complainant was, by the terms of the contract 268, to insure certain risks for a consideration, to wit, reinsuring the excess lines of the Ins. Co. of North America.

Marshal J. Smith & Co., speaking for complainant, say: "We propose to take a portion of the general reinsurance of the Ins. Co. North America," and Charles Platt, Jr., says in reply: "Your valued favor of the 6th inst. is received and I note contents with care. The Ins. Co. of North America, through me, will be glad to enter into the reinsurance arrangement with the Hibernia."

643 I conclude from the facts that the object of policy 268 was to reinsure the excess of the lines that the Ins. Co. of North America usually carried, and that policy 268, though nominally made with Charles Platt, Jr., was to reinsure the respondent only on risks in excess of its usual lines, and that Charles Platt, Jr., was acting for and representing respondent.

He says in his letter of Oct. 11th, 1880: "Of course, all risks accepted by me will be such that the Ins. Co. of North America carries their line on."

The representations made in this letter are material. In the words of Mr. Arnold, they tend to induce complainant to more readily assume risks which they would otherwise have avoided. (Arnold, 5 Ed., Vol. 1, p. 512.)

Policies 277, 296, & 306 were made directly with the Ins. Co. of North America, and all of them bear the clause showing they applied to the excess of the usual lines carried by the respondent. All of them, including 268, have the note attached reducing the amount to be reinsured rom $10,000 to $5,000. These facts lead me to believe the respondent was to retain its usual line on all risks where it reinsured with complainant, and the risks complainant was to underwrite were only such as it (respondent) retained its usual line on.

1st. The usual line of respondent, as appears from the evidence, was $50,000. It generally reinsured the excess of $50,000. This sum, therefore, was its usual line to be carried in all cases on risks reinsured with complainant under the contracts.

2nd. It would result that policy 268 would attach in favor
644 of respondent, and at the ports mentioned in it and on vessel and cargo, only where the amount of the risks taken by respondent on any one vessel exceed $50,000.

The question now arises, Is complainant bound for any loss resulting from reinsurance where respondent failed to carry its usual line unless it appears complainant accepted the risks knowing respondent was not carrying its usual line?

In the case of the ship Tonawanda application was made to reduce respondent's line on that vessel, because respondent's letter of March 10th, 1884, to Marshall J. Smith & Co. states: "In the case of the Tonawanda the $10,000 line was retained by special permission, the vessel being known to us in all respects as being good, but old." In a letter of March 2nd, 1883, Marshal J. Smith & Co. notified Charles Platt, Jr., to notify complainant whenever respondent reduced its lines. In a letter dated March 7th, 1883, in answer, Charles Platt, Jr., says: "I have no facilities for reducing the lines of the Hibernia, and besides the Insurance Co. of North America will not tell me when they reduce."

In a letter of April 11th, 1883, respondent sent, through Charles Platt, Jr., to complainant an application for a policy reinsuring it on merchandise and specie from Laguayra, Porto Cabello, and Curacoa to ports in the United States to apply to the excess that the Ins. Co. of North America may have on all their policies on vessel, freight, and cargo, including specie and treasure, over $60,000, and to apply *pro rata* with all other reinsurance on the same excess.

This letter and application resulted in policy 277, which
645 was also sent to Charles Platt, Jr., making the line under that policy $60,000. Therefore policy 277 attached only where the risks carried by respondents on any one vessel exceeded $60,000 on vessel, freight, cargo, specie, and treasure when said vessel was from the ports named to ports named in the contract.

On 9 & 10th Nov., 1881, respectively, respondent sent to complainant, through Charles Platt, Jr., two other applications for two more policies of reinsurance or merchandise, one from ports in East Indies and one from ports in the West Indies to ports in the United States, to apply on the excess which respondent might have on all its policies on vessel, freight, cargo, and profits, including specie and treasure, over $50,000, and to apply *pro rata* with all other reinsurances on the same excess. Complying with these applications, complainant made policies 296 & 297, respectively, and forwarded them to Charles Platt, Jr., for respondent.

These policies adopted the words of the applications as specified above; therefore under these two policies risks would not attach where a vessel was bound from any other port than those named in the policies or where the respondent carried a risk of less than $50,000 on any one vessel.

On Aug. 26th, 1882, respondent sent complainant, through Charles Platt, Jr., an application for another policy of reinsurance on cotton from ports in the United States to ports in Europe to apply on the excess which the respondent may have on all its policies on vessel,

freight, cargo, or profits, including specie and treasure, over $70,000, and to apply *pro rata* with all other reinsurances on the same
646 excess. On this application policy 306 was made by complainant.

I cite these policies—

1st. To show contracts were made with complainant by respondent through Charles Platt, Jr., acting for respondent.

2nd. To show that in all the policies and letters upon which the contracts were based it appears the respondent was to carry its usual line as specified in said contracts.

3rd. To show that when the amount insured by respondent exceeded its usual line the complainants' policies attached on that excess up to $10,000, provided the vessel on which the risk was taken was from and to the port and ports named in the policies.

I conclude, therefore, when the two conditions concur the policies applied.

If this were not the case the respondent, however large a business it conducts, could accept risks on every character of vessel, seaworty or unseaworthy, and under the circumstances the most hazardous, and to save itself from loss could reinsure the whole risk. This certainly was not contemplated under the terms of the contracts made with complainant.

As stated above, all the policies and propositions for policies appear to be made through Charles Platt, Jr., of Philapelphia. Copies of all applications and notices of risks were transmitted to Marshal J. Smith & Co., of New Orleans, who appear to have acted for complainant. All demands for losses on risk reported were sent by respondent through Charles Platt, Jr., to complainants. Thus it appears that Charles Platt, Jr., acted as agent of respondents
647 and Marshal J. Smith & Co. acted as agent of complainant in New Orleans. Further, a demand was made on Charles Platt, Jr., to report particulars of risks as soon as taken. This he was unable to do, according to his letters to Marshal J. Smith & Co. of Sept. 15th, 1883, and June 22, 1883.

In the letter of June, 1883, Charles Platt, Jr., in reply to demand of complainant to have its policies reduced from $10,000 to $5,000, says: "I will have policies Nos. 296, 297, 268, & 306 reduced to $5,000 from July 1st next, as requested by yours of 9th inst."

This statement shows that all the business done under all the policies was conducted through Charles Platt, Jr., acting for respondent and Marshal J. Smith & Co. acting for complainants.

On Nov. 23rd, 1883, complainant notified respondent, through Charles Platt, Jr., it desired to cancel all its open policies with the Ins. Co. of North America; all of which correspondence and letters go to satisfy me that Charles Platt, Jr., was acting for respondent; that the business was for respondent, and that all Charles Platt, Jr., did was with its knowledge, approval, and direction. It further appears no objection was made to the risks reported or to demands for losses until late in the autumn of 1883, when complainant applied to respondent for information respecting amounts which respondents had

insured and reinsured on certain vessels. The replies to these inquiries disclosed the fact that respondent had reinsured on certain vessels reported to complainant very largely below the sum of $50,000; also that in certain cases where complainant had paid losses respondent's entire risk for its customers was below $50,000.

648 The question arises, Had it the right to do this under the terms of the contracts? In the case of Hodgson *vs.* Richardson, 1 Wm. Black, p. 463, which was an insurance on ship and cargo from Genoa to Dublin, "the adventure to begin from the loading to equip for the voyage," it appeared the ship loaded at Leghorn, lost her convoy and put into Genoa, where she remained five months for convoy, and was lost between Genoa and Dublin. Lord Mansfield held the language plainly implied a representation that the vessel had loaded or would load at Genoa, and that as she had loaded at Leghorn the policy was void *ab initio* on the ground of misrepresentation. The same learned judge, in the case of Tiles *vs.* Burton, 1 Park, 414, declared: If he state as a fact which he does not know to be true, but only believes it, it is the same as a warranty. The modern cases have not relaxed this stringent rule. Wells, J., in Anderson *vs.* Pacific Fire & Marine Ins. Co., L. R., 7 C. P., p. 63, says: There is no doubt that a material misrepresentation, though perfectly honest at the time made, with intent that it should be acted on by the insurer, and which has led to the policy being granted, will defeat the policy.

This opens the controversy between the parties to this suit.

Respondent contends complainant was bound when Charles Platt, Jr., received notice of the risks, and that no obligation rested upon it (respondent) to carry its usual line on any vessel reported. On the other hand, complainants contend respondent, under the terms of the contracts, was bound to carry its usual lines, and, in case it did not, complainant was not liable. If I interpret the contracts correctly the complainant was only bound on marine risks

649 when the respondent carried its usual lines, and the usual lines ranged, as the several policies will show, from $50,000 to $70,000.

Was complainant bound on any risk where respondent failed to carry its usual line, unless previous notice of such fact was given and the risk, after such notice, accepted?

When no moral fraud can be imputed, a representation, though false, will not avoid the policy unless it be material. It becomes important, therefore, to inquire what it is that makes a representation material.

Every representation is to be presumed material where there is just reason to believe either determined the underwriter to insure or influenced his estimate of the premium. (See Marshall on Ins., p. 449; 1 Phillips Ins., notes 524, 525, 526; Duer on Representations, p. 71).

The test of materiality is the probable effect which the statement might materially and reasonably be expected to produce on the mind of the underwriter.

It is not necessary that the representations should be directly as

to the state or condition of the subject of the proposed insurance. It is enough that it reasonably did exert, or might reasonably be presumed to have exerted, an influence over the mind of the underwriter in determining to assume a responsibility he would not have otherwise have undertaken. (See Arnold Marine Ins., 5 Ed.; Maclachlan, Vol 1, pp. 526, 527).

650 So, where the insured represented he had paid eight guineas premium per cent., but it appeared he had paid fifteen, eighteen, and twenty-five guineas per cent., the court of sessions gave judgment against the underwriter and held that "the statement as to the premium was not a misrepresentation as to any circumstance attending the situation or condition of the ship or voyage which could affect the nature of the risk," but the House of Lords reversed the judgment and declared the policy void on the principle "that every representation is fatal to a contract which is made under such circumstances and in such a way as to gain the confidence of the other party and induce him to act when otherwise he would not." (Sibbald *vs.* Hill, 2 Dow's P. C., 263; Sun Mut. Ins. Co. *vs.* Ocean Ins. Co., 107 U. S., 510 & 511.)

At the very threshold of negotiations for policy 268 complainant was told it was to reinsure those risks that the Ins. Co. of North America carries its line on. In other words, the risks which respondent in its judgment deemed safe enough for itself to carry its line on the complainants shall carry its stipulated line on. A stronger inducement could not have been held out to complainants for making the contracts it did make.

Misrepresentations which avoid the policy: Walton *vs.* Nat. Loan Fund Ass'n, 20 N. Y., p. 32; Sawyer *vs.* Coasting Nat. Ins. Co., 6 Gray, 221; Louisiana Mut. Ins. Co. *vs.* New Orleans Ins. Co., 13 L. Am., 246; Towl *vs.* National Guardian In. Co., 30 L. J., ch. 900; Trail *vs.* Barring, 4 D. C., J. & S., 318.

651 The cases of Trail *vs.* Barring & The La. Mut. Ins. Co. *vs.* New Orleans Ins. Co. (*supra*) are right in point, because both show that the party reinsured represented an intention to retain a specific part of the risk, but failed to do so, and the court declared the reinsurance void.

Usage as applicable to contracts.

"An insurance policy, especially of marine insurance, is but an imperfect guide to the real contract between the insurer and the insured. Very much depends on usage and special rules of law." (Rankin *vs.* Potter, 6 H. L. Cases, 83; Parkhurst *vs.* Glouster Ins. Co., 100 Mass., 301.)

"In carrying into effect every sort of contract the courts in determining its meaning are compelled to consider also and be guided by such lawful usages as are shown in connection with it and the law applicable to the particular case. In few instances, if any, do the mere interpreted words furnish the sole rule." (Bishop on Contracts, 609.)

Evidence as to usage or customs has been produced going to show

that reinsurances are difficult to obtain in cases where the first insuring company keeps no part of the risk, and, further, that the premium is greater in such cases. (See testimony of Paul Fourchey, pp. 44, 48; F. A. Chalaron, pp. 78, 57.)

These witnesses in their testimony, pp. 52 & 61, swear—

That under no circumstances would they pay a loss where the first insurer carried no risk, and if they had paid they would immediately on finding out the facts proceed to recover back the money.

If this be the custom, and there is no evidence produced to dispute it, then complainant's case becomes much stronger.

652 Counsel for respondent insists that Charles Platt, Jr., was the agent of complainant, and as such received all information relating to risks reported, and his knowledge was the knowledge of complainant. If this is correct, then complainant was not in ignorance or without knowledge of the facts relating to risks and losses; but I do not find the evidence to sustain this view of the case.

Policy 268 was made by complainant with Charles Platt, Jr., and is upon its face a contract to Charles Platt, Jr., for account of whom it may concern. It is to him in name for the benefit of others contemplated by the parties.

Complainant is one party to this contract and Charles Platt, Jr., is the other party to it. How, then, can Charles Platt, Jr., ever be complainant's agent under this contract? It is not a contract conferring authority of agency upon Charles Platt, Jr.

This form of contract is not new. Such contracts are outstanding in the hands of merchants in the maritime ports of the world, and have been in use for hundreds of years. I do not find it asserted that a merchant who holds a policy of reinsurance, insuring him by name for account of whom it may concern, is the agent of the party making the policy. To say that A, if he contracts with B for the benefit of an undisclosed principal, thereby makes B his agent, is simply saying that A is contracting with himself; for, if B is the agent of A, then A is contracting with A and there is no second party to the contract.

653 Suppose the Hibernia Ins. Co. (complainants) had refused to pay a loss under policy 268, could respondent have brought suit on that policy? If so, how? Either the name of Charles Platt, Jr., as nominal principal, or in the name of respondent, averring the contract policy 268 was for its account.

In policy 268 Charles Platt, Jr., is named as one of the principals. The other principal is complainant. If Charles Platt, Jr., is one of the principals, even a mere nominal one, could he be the agent of complainant at the same time under the terms of that contract?

Assuming Charles Platt, Jr., to be the agent of complainant, does not every step in proceeding under that contract lead from absurdity to absurdity?

Why should complainant call in Charles Platt, Jr., to make a contract with itself?

What obligations could arise from such a contract?

The evidence makes it very clear that policy 268 was made for the benefit of respondent only.

Charles Platt, Jr., testifies (p. 216) that contract (268) was made in his name for respondents' convenience and that it was intended to reinsure respondents and for no other purpose.

I now proceed to inquire what amount had been improperly demanded by respondent and paid by complainants?

This will fix the amount of complainants' demand, if I am correct in respect to the law of the case.

654 On examination of the various risks where complainant has paid losses where the respondent did not comply with its part of the contract I find the following:

1st. On June 17th, 1881, complainant received notice for a risk of $10,000 on the ship Obi, from the Philippine Islands to Boston, under policy 268. The risks taken by respondent for its customers was $44,499. The amount reinsured was $17,500, including $10,000 with complainant. The ship suffered damage, and respondent claimed of complainant $3,531.27, which was paid.

The evidence shows complainant was not aware of the amount of insurances and reinsurances effected by respondent on this ship at the time of loss and time of payment of the $3,531.27. Respondent claims the risk was by special application and that complainant was aware respondent would not carry its usual line.

The application states, "On sugar, $10,000, being excess of $25,000." What other cargo was on the vessel, if any, is not mentioned. What insurance on the vessel, if any, is not mentioned. Whether respondent had or had not made insurance on cargo other than sugar or on the vessel or freight cannot be inferred from the words of the notice, and I think complainant had a right to assume respondent was reporting a risk within the terms of the policy. It appears on June 11th, 1881, respondent's agents at Boston suggested by letter a reduction on vessels arriving after 15th Sept., 1881, and the agents named the Obi and two others as likely to arrive after that date. On June 28th respondent requested the same agents to

655 reduce their lines on these ships to $25,000. On June 11th, 1881, the insurance was taken, and on June 28th, 1881, 17 days after the risk was taken, the request to reduce the lines was made. Thus it must be inferred from the notice up to 28th June respondent left complainant in doubt as to how much it, respondent, intended to carry on the Obi.

There is nothing in the evidence to show respondent intended its lines on the Obi to be reduced, nor were the reasons for reducing disclosed to complainant, so far as the evidence discloses. (See testimony, pp. 4, 6, 80, 81, 82.)

2nd. On Oct. 18th, 1881, complainant received notice for a risk of $5,000 on the S. S. Avlona, from ports in the Mediterranean Sea to Montreal, under policy 268. The risk taken by respondent for its customers was $82,300. The amount reinsured was $40,000 in several companies, including $5,000 with complainant. The steamer

suffered damage and respondent claimed of complainant $525.30, which was paid.

There is nothing in the evidence to show complainant was aware respondent had carried but $42,300 on the steamer at the time of the report of the loss and payment by complainant.

The respondent, in reply to this demand, avers that complainant accepted this risk knowing respondent did not intend to carry its usual line of $50,000. The notice to complainant reads: "Upon cargo, excess over $25,000 not to exceed $5,000." There is nothing in that notice to inform complainants respondent was not carrying the amount of $50,000, for the reason the vessel, the freight, profits, and many other things are not included in the term cargo.

656 The evidence shows (see testimony, p. 18) respondent was insuring the hulls of vessels. Therefore complainant had a right to infer the hull of this vessel was also insured.

I am not prepared to say there is anything contained in the notices that would lead the complainant to infer respondent was not carrying its usual lines on any of these vessels.

The reinsurance on this ship was applied for Oct. 18th, 1881, and particulars were afterwards sent to complainant Dec. 21st, 1881. On Oct. 30th, 1881, the respondents' agents at Montreal telegraphed respondents as follows:

"Steamship Avlona, Cadiz, 10th, via Halifax. Montreal reported 77; reinsured, 40, seeking 10 more in Boston. Please try for five." And again, on Nov. 4th, 1881, the same agent telegraphed as follows: "Avlona expected to sail to-morrow from St. John's. If you think a further reinsurance of $40,000 desirable please wire Marshall J. Smith. I wired him last Monday on receipt of your telegram, but too late."

The New York Herald of Nov. 1st, 1881, shows that on that day it was known in New York that the Avlona had been towed into St. John's, N. F., by the steamship Bristol without a rudder and some of the cargo jettisoned.

No information was given to complainant that the Avlona had put into Cadiz, or that she was in a damaged condition at St. John's, yet it appears respondent was trying to procure reinsurance through *their* agents at Montreal four days after the New York Herald had published the fact that she was in a damaged condition on

657 Nov. 1st, at St. John's.

If policy 268 be regarded as a contract binding upon complainant only, on its receiving notice of the risk respondent should have disclosed at the time of reporting the risk that a week before it made the application it had received notice of the steamer's arrival at Cadiz, and again, on 21st Dec., 1881, when it fixed the several amounts of reinsurance, it ought to have disclosed the further fact that she was in a damaged condition at St. John's, N. F., on the 1st Nov., 1881. There is nothing in the evidence to show it did either. It is proper to presume respondent regarded the contract as attaching in its favor at the moment the condition upon which it was made to attach happened.

(See testimony, pp. 18, 66, 67, 95, & 170.)

3rd. On June 28th, 1882, complainant received notice of a risk of five thousand dollars ($5,000) on the bark Yorkshire, from Barbadoes to Montreal, under policy 268.

The risk taken by respondent for its customers was $52,881; the amount reinsured was $39,100 in several companies, including $5,000 with complainant. The bark was lost July 4th, 1882, about twelve miles off Sable Island light. Respondent claimed of complainant the full amount of the reinsurance, which was paid. There is no evidence that complainant was made aware of the amount of insurance and reinsurance effected by respondent at any time prior to the payment of the loss.

The notice of this risk reads: "$5,000 upon the merchandise."

(See testimony, pp. 12, *et seq.*, & 93.)

658 4th. On Aug. 29th, 1882, complainant received notice of a risk of $5,000 on the bark Impi, from Philadelphia to Europe, under policy 268. The risk taken by respondent for its customers was $40,690. The amount reinsured was $10,000 in several companies, including $5,000 with complainant. This bark ran aground at Lynn Nov. 11th, 1882, and was damaged. Respondent claimed of complainant $489.00, which was paid. The evidence shows that complainant made the payment in ignorance of the amount insured and reinsured by respondent.

The notice reads: "Upon wheat (F. P. A., E. C.—meaning free of particular average, English conditions), excess over $30,000 not to exceed $5,000." I find nothing in this notice from which complainant could infer respondent would not carry a risk to the amount of $50,000 on the bark. It does not follow from anything stated in the notice that respondent had insured only wheat on that vessel. (See testimony, pp. 75, *et seq.*, & 97 & 98.)

5th. On Sept. 23rd, 1882, complainant received notice of a risk of $5,000 on the bark Budstiken, from Jamaica to Montreal, under policy 268. The risk taken by respondent for its customers was $19,308. The amount reinsured was $20,000 in several insurance companies, including $5,000 with complainant. This bark was totally lost in the Gulf of St. Lawrence on or about Nov. 26th, 1882. Respondent claimed and received from complainants $4,288,45, which was paid. The evidence shows that respondent applied for reinsurance Sept. 23rd, 1882, as follows:

The Hibernia Ins. Co., $5,000; American Ins. Co., $5,000;
659 Hope Ins. Co., $1,750; New Orleans Ins. Co., $3,750; Teutonia Ins. Co., $2,000; People's Ins. Co., $2,500. When these reinsurances were effected respondent did not have particulars of the risk, but on Oct. 24, 1882, it received particulars of the risk. Four weeks later, namely, Nov. 20th, 1882, it made the necessary declarations to the several insurance companies and reinsured for the several sums above stated, making a total reinsurance of $20,000, which is $691 more than it knew it had at risk. Respondent charged all the reinsuring companies except complainant with the full amount reinsured. Had it pursued the same course with complainant it would have received $691 more than it had paid as loss on

that vessel; but respondent collected of complainant $4,288.45 only, which balanced the transaction.

The evidence of Wm. A. Platt, second vice-president of respondent company, in his evidence (p. 48) when asked the question, Q. "Why complainant had not paid respondent as much as the other insurance companies had paid," replied, "Because it was thought proper. We had the option of dividing any short interest between any companies as we chose, so we deducted it from the Hibernia, as our relations with them has always been most friendly." Q. By the short interest you mean the difference between the sum at risk and the sum reinsured? "Yes; precisely."

Under the law, as I understand it, respondent was in duty bound to disclose to complainant the amount it had at risk on the bark when it closed the several reinsurances; then complainant would have had the option to decline the whole of the risk taken by complainant, as respondent did not carry its usual line on that vessel. From the evidence I am satisfied the complainants
660 paid this claim without knowledge of the fact that the whole of the risk was reinsured and that respondent carried nothing.

(See testimony, pp. 38, 90.)

6th. On Nov. 28th, 1882, complainant received notice of a risk of $5,000 on steamship Peruvian, from Montreal to Liverpool, under policy 268. The risk taken by respondent was $33,620.00 for its customers. The reinsurance was $5,000 with complainant.

The Peruvian suffered damage by collision and respondent claimed and received from complainant $327.60, which was paid without knowledge and in ignorance of the amount at risk and the amount carried by respondent.

(See testimony, pp. 76, *et seq.*, & 99.)

7th. On Dec. 22nd, 1882, complainant received notice of a risk of $5,000 on the bark Ocean, from Trieste to New York, under policy 268. Respondent's risk taken for its customers was $24,307.00. The reinsurance was $8,000, including $5,000 with complainant. The vessel was lost. Respondent claimed and received of complainant $693.46, which was paid in ignorance of the amount insured by respondent and the amount reinsured, as the evidence will show.

(See testimony, pp. 75, 96, & 97.)

8th. On Jan'y 2nd, 1883, complainants received notice of a risk of $1,428.00 on the bark Skerryvore, from Havana to Boston, under policy 296.

Respondent's risk taken for its customers was $58,569. The reinsurance was $28,569.

This bark was abandoned at sea on Jan. 10, 1883.

661 Respondent claimed and received from complainant $1,428.00. The evidence shows complainant paid said amount without knowledge and in ignorance of the insurance and reinsurance effected by respondent.

(See testimony, pp. 73, 96.)

9th. On Feb'y 1st, 1883, complainant received a notice of a risk of $5,000 on the bark Adele, from Java to Montreal, under policy 268. Respondent's risk taken for its customers was $114,000.00.

The reinsurance was $61,500.00, in the following insurance companies:

China Mut., $10,000; Boylston, $5,000; Ocean, $5,000; Merchants', $3,500; Union, $3,000; Washington, $5,000; Hope, $2,500; Mechanics' & Traders', $2,500; New Orleans, $5,000; Southern, $2,500; Great Western, $10,000.00, and complainants, $5,000.00.

The evidence discloses the fact that this bark only received a part of her cargo at the first port of lading, and the insurance made there by respondent amounted to $47,392.00. While the bark was proceeding to her second port of lading she suffered damage by stranding to the amount of $29,000, which was paid by respondent.

On Feb'y 15th, 1883, notice of the loss was received by respondent. The bark proceeded to her second port of lading and there received cargo, which was insured by respondent for $44,252.00. She then completed her voyage without suffering any other damage.

On April 26th, 1883, the respondent fixed the several sums above mentioned of reinsurance with the companies and with com-
662 plainant without disclosing to complainant the fact that the bark had suffered damage in February. On 5th May respondent procured an additional amount of $20,000 reinsurance from the Delaware Mut. Ins. Co. and warranted them against the damage that had previously happened to the bark. After respondent had ascertained the amount of loss for which it was liable to its customers it divided the loss *pro rata* with the reinsuring companies except the Delaware Mut. Ins. Co., complainant's *pro rata* being $1,692.67, which was paid without knowledge or information as to the facts hereinbefore set forth, as the evidence will show.

(See testimony, pp. 16, 17, 18, 83, & 84.)

10th. On Oct. 23rd, 1883, complainant received notice of a risk of $5,000 on the bark Etimologia, from Philadelphia, under policy 268. Respondent's risk taken for its customers was $45,000. The reinsurance was $10,000, including $5,000 with complainant. On Dec. 13th, '83, the bark was stranded near Wookington and was a total loss. Complainant paid the reinsurance without knowledge and in ignorance of the risk carried by respondent, as the evidence will show.

(See testimony, pp. 10 & 92.)

11th. On March 18th, 1882, complainant received notice of a risk of $10,000 on the bark L. E. Carm, from Tecakula to United States, under policy 268. Respondent's risk taken for its customers was $61,220, and reinsurance was $28,500.00, including $10,000.00 with complainant. This bark was a total loss by the alleged barratry of the master, and respondent resisted the demand of its custom-
663 ers for the loss. The contribution demanded from the complainant was $2,523.96, which sum was paid by complainant in ignorance and without information as to the amount at risk and the amount reinsured, as the evidence shows.

(See testimony, p. 127.)

12th. On March 18th, 1883, complainant received notice of a risk of $10,000 on the ship Matchless, from Ilodia to the United States, under policy 296. Respondent, supposing the risks for its customers

would amount to $140,000.00, procured reinsurance amounting to $85,000 in the following insurance companies, to wit: Orient Mut., $10,000; Ocean, $5,000; Salem, $5.000; China Mut., $15,000; Boylston, $7,500.00; Shoe and Leather, $7,500; Boston Marine, $15,000; New York Mut., $5,000; State of Penna., $5,000, and complainants, $10,000. The ship foundered near the Island of Krakator, of which fact respondent received notice June 18th, 1883. About one week thereafter, on June 26th, respondent ascertained the exact amount of risks taken by it to be $123,488.00, and on that date reduced its reinsurances as follows: Orient, $8,228; Ocean, $4,115; Salem, $4,115; China Mut., $12,343; Boylston, $6,172; Shoe and Leather, $6,172; Boston Marine, $12,343; but the reinsurance in the New York Mut. Ins. Co., the Ins. Co. State of Penn., and complainants respondent did not reduce, making them pay the total amount reinsured by them, less a rebate for prompt payment. Thus the complainant paid $10,000, less $93.33 rebate, in ignorance of the facts above stated. The policy under which this risk was reinsured expressly provides it is to apply to the excess respondent may have by all its policies on ship and cargo, freight, profits, and specie over $50,000, and that it shall apply *pro rata* with all
664 other reinsurances on the same excess. Complainant was bound to respondent on the excess of $50,000.00, to wit, $73,488.00, *pro rata* with all other reinsurances on the same excess. The whole amount of reinsurance being $85,000, and complainant's reinsurance being $10,000, and the excess being $73,488.00, the problem should be stated thus: If $85,000 pays $73,488, how much shall $10,000 pay? The answer is $8,645.64. Deducting from this sum $82.13 for prompt payment, the amount complainant ought to have paid is $8,563.53 instead of $9,906.67, the amount paid, thus showing complainant overpaid respondent $1,343.14, which in accordance with the evidence, was paid in ignorance of the facts stated above. (See testimony, pp. 17, 78, 100, & 112.)

13th. On Oct. 15th, 1883, complainant received notice of a risk of $5,000 on the ship Adam M. Simpson, from Iloilo to the United States, under policy 295. Respondent, supposing its insurance for its customers would exceed $140,000, with the intention of carrying its line of $50,000, procured reinsurances on Oct. 16th, 1883, amounting to $92,500, in the following insurance companies, to wit: American, $5,000; Salem, $5,000; China Mut., $20,000; Manufacturers', $5,000; Boylston, $7,500; Ocean, $5,000; Merchants', $5,000; Boston Marine, $20,000; Shoe and Leather, $7,500.00; Ins. Co. State of Penn., $2,500, and complainant, $5,000.00. On 9th and 12th Feb., 1884, particulars of the risk were received by respondent disclosing the fact that it had only $87,344 on cargo, etc., and $4,000.00 on the hull, making the total risk on the vessel $91,344 instead of $40,000.

The ship and cargo were lost in the Palawan Passage Jan'y 2nd, 1884, and respondent had notice of the loss on that date, for
665 when Mr. Wm. A. Platt, second vice-president, was asked, "When did respondent receive information as to the disaster,

so far as your records show?" he replied, "I should say Jan. 2nd, 1884." Respondent, having ascertained the amount of risk on Feb. 12th, 1884, as stated above, a month after the disaster, it voluntarily reduced all its reinsurances except the sums reinsured by the Ins. Co. State of Penn., and complainant. Respondent reduced the reinsurances as follows:

American, $1,991.00; Salem, $1,991; China Mut., $7,643; Manufacturers', $1,991.00; Boylston, $2,986.00; Ocean, $1,991.00; Merchants', $1,991.00; Union, $1,991.00; Boston Marine, $7,963.00; Shoe and Leather, $2,986.00, amounting to $33,844.00, which respondent collected in addition to the $2,500 from Ins. Co. State Penn. and from complainant $5,000.00, making $41,344 reinsurance collected by respondent. The ratio of reduction, taking the above figures, is a little over $\frac{4}{5}$ of the sum reinsured.

Complainant's contract with respondent provides: To apply on the excess which the Ins. Co. of North America may have by all their policies on vessel and cargo, including specie or treasure, over $50,000.00; to apply *pro rata* with all other reinsurances on the same excess (this is the same policy under which the Matchless was reinsured). Respondent should not have required complainant to pay the face of its reinsurance, to wit, $5,000.00, while other reinsurers on the same risk who had originally reinsured precisely the same sum as complainant were reduced, as the respondent designated, to $1,991.00.

Complainant, therefore, was liable to respondent for the amount of loss which was in excess of $50,000, which is stated by
666 respondent at $41,344.00, and *pro rata* with all other reinsurances on the same excess, which appears by respondent's statement as $92,500. The problem is to be formulated thus: If $92,500 pay $41,344 what shall $5,000 pay? Answer. $2,234.81. Therefore complainant paid respondent $5,000 in ignorance of the facts set forth above, thus paying $2,765.19 more than the amount due respondent. (See testimony, pp. 98, 102, 103, 106.)

Respondent has presented an account, marked "B," showing a balance of $209.65 due it for certain general average on certain vessels named in the account. Complainant admits the correctness of the claim and says that it is ready to pay the amount whenever respondents show the risks mentioned were within the terms of the agreements. No evidence is before me nor has any been presented to me to enable me to say whether the claims are within the terms of contracts or not. As proof of loss is waived, and for the reasons just stated, I do not pass upon any of the items making up this claim of $209.65, my finding being without prejudice to this claim of respondent.

In conclusion, I find that complainant is entitled to recover of respondent the sums hereinafter mentioned as follows, to wit:

*To Amounts Paid in Error.*

| | | |
|---|---|---|
| 1st. | On ship Obi | $3,521 37 |
| 2nd. | S. S. Avlona | 526 35 |
| 3rd. | Bark Yorkshire | 5,000 00 |
| 4th. | " Impi | 459 11 |
| 5th. | " Budstikken | 4,288 45 |
| 6th. | S. S. Peruvian | 327 60 |
| | 7th. Bark Ocean | 693 43 |
| 667 | 8th. Bark Skerryvore | 1,428 00 |
| | 9th. " Adele | 1,692 67 |
| 10th. | 2 Etimologia | 5,000 00 |
| 11th. | " L. E. Cann | 2,523 96 |
| 12th. | Ship Matchless | 1,261 67 |
| 13th. | " Adam M. Simpson | 2,765 19 |
| | | $29,487 80 |

Respondent is entitled to credits for all the premiums paid on the risks named above as follows:

| | |
|---|---|
| Ship Obi | $375 00 |
| S. S. Avlonia | 100 00 |
| Bark L. E. Cann | 300 00 |
| " Yorkshire | 125 00 |
| " Impi | 62 35 |
| " Budstikken | 125 00 |
| S. S. Peruvian | 50 00 |
| Bark Ocean | 250 00 |
| " Skerryvore | 21 42 |
| " Adele | 200 00 |
| " Etimologia | 137 50 |
| Ship Matchless (*pro rata*) | 53 60 |
| " Adam M. Simpson (*pro rata*) | 134 80 |
| | $1,934 67 |
| Less 25% rebate | 433 66 |
| | $1,501 01 |
| Balance due complainant | $27,986 79 |

668 Showing respondent is entitled to a credit of fifteen hundred and one .01 dollars, which, being deducted from the sum of twenty-nine thousand four hundred and eighty-seven $\frac{80}{100}$ dollars, above stated, leaves a balance of twenty-seven thousand and nine hundred and eighty-six $\frac{79}{100}$ dollars in the favor of complainant, for which sum I recommend a decree in favor of complainant and against respondent, with lawful interest from judicial demand.

All of which is respectfully submitted.

New Orleans, September 24th, 1885.

A. G. BRICE, *Master.*

*Extract from Minutes.*

HIBERNIA INSURANCE COMPANY
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

NEW ORLEANS, FRIDAY, *November 20th*, 1885.

On motion of Ernest Sabourin, on suggesting to the court that the time for filing exceptions to the master's report herein expires on Friday, the 20th November, 1885, that defendants have made objections to the report, and that they desire to file exceptions thereto, to be heard in the usual course; on further suggestion that during the thirty days allowed for filing exceptions your mover, the sole solicitor for defendant, has been frequently very ill, retained at his home and unable to study and prepare properly within the
669 thirty days allowed by the rules of the court the exceptions which needs must be made and filed in the interests of justice and for the protection of the defendants, and that he has been very ill at home and under medical treatment during the past three days, upon suggesting that an extension of fifteen days' time is necessary for the preparing and filing of said exceptions of defendants—

It is ordered by the court that defendants have an extension of fifteen days' time from the 20th November, 1885, within which to prepare and file their exceptions to the report of the master herein.

STATE OF LOUISIANA, *Parish of Orleans:*

Ernest Sabourin, mover herein and solicitor for defendants aforesaid, being duly sworn, says that all and every the allegations of the motion aforewritten are true, and that the extension of time requested by him is necessary as hereinabove and for the reasons stated.

(Signed) E. SABOURIN.

Sworn to and subscribed before me this 20th November, 1885.

(Signed) T. McC. HYMAN,
*D'y Clerk U. S. Circuit Court.*

*Extract from Minutes.*

NEW ORLEANS, FRIDAY, *December 4th*, 1885.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INSURANCE COMPANY
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

670 On motion of E. Sabourin, solicitor for defendants, on suggesting a necessity for a delay in filing exceptions to master's

report, it is ordered that defendants' time within which to file their exceptions to the report of the master herein be extended ten days from December 5th, 1885.

*Order. Time Extended.*

Extract from Minutes.

NEW ORLEANS, TUESDAY, *December* 15*th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INSURANCE CO.
*vs.*
INSURANCE CO. OF NORTH AMERICA. } No. 10647.

On motion of E. Sabourin, solicitor for defendants, ordered that defendants be allowed until to-morrow, 16th December, 1885, to file exceptions to the master's report herein.

*Case Fixed for Hearing.*

Extract from Minutes.

NEW ORLEANS, THURSDAY, *December* 17*th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

(See page 703.)

671 *Exceptions of Defendants to the Report Made by the Master, A. G. Brice, in the Above-Entitled Cause. Filed December* 16*th*, 1885.

United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

HIBERNIA INSURANCE COMPANY
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

Exceptions of respondents to the report made by Master A. G. Brice in the above-entitled cause.

The undersigned, solicitor for the respondents, respectfully makes and presents, on their behalf, to this honorable court the following exceptions to the report of Master A. G. Brice, made and filed in in this cause, persevering in and reiterating the objections as first presented to the master before the filing of his report and referring to said objections as part of his present exceptions:

1st. That the master has not furnished with his report, though requested by the undersigned, the minutes of the proceedings held and of the evidence adduced before him, and that said minutes are necessary and would show the whole of the evidence introduced by both parties and considered by the master, both documentary and verbal, as well as the requests made by the undersigned and admissions made by complainants' solicitor, none of which now appear of record as made, particularly the request of the undersigned that the admission, made voluntarily and
672 spontaneously before the master, on March 12th, 1885, at the closing of the evidence at Philadelphia, in the presence of the president, vice-president, and the undersigned, solicitor of respondents, that after an examination of the books of the company and the testimony adduced in the case there was not the slightest ground for a charge of fraud, and that the company was vindicated in that respect, be noted and referred to by the master in his report, and also the full admission of complainants' solicitor, made herein before the master and at the request of the undersigned, in order to avoid further delay, not only that respondents paid certain claims for losses for which no special proof had been made upon due proof of loss presented by them to complainants, but, further, that Exhibit 132, offered by respondents to show a balance due them of $209.65 at that date, March 12th, 1885, by complainants for losses not yet reimbursed to them, was wholly correct and due as stated therein, and, as the master added, that there was no dispute as to accounts, and would show that a large number of the applications for reinsurance of respondents in hands of complainants have not been produced, though called for and promised to be attached to the particulars of reinsurance.

2nd. That in the "facts," at page 2 of the report, the evidence does not show, as stated by the master, that, "to compete profitably" and to meet the wants of customers, respondent was in the habit of accepting the whole amount of the risk any customer applied
673 for on a vessel, "but that, on the contrary, the evidence shows that respondents only accepted good risks, such as any good and competent marine company in the United States or elsewhere might and would take," and that not a single loss occurred in their transactions with complainants, the risks of which would not have been accepted by any company.

3rd. That the definition of "usual line," at page 2, by the master is not sufficient and may mislead, as, in fact, "usual line" means not an amount fixed absolutely as a limit to itself by a company to carry or have at risk on any one vessel at any one time, but, rather, it means an amount not governed by an inflexible rule, but varying very frequently and even almost constantly, according to the vessel, the crew, the cargo, the nature of the voyage, the seasons, etc., as the evidence abundantly shows; and, moreover, the evidence shows that respondents in their large business have no absolute and invariable line of risks, they varying and forming their judgment as each case occurs.

4th. That respondents did not, as erroneously stated at page 3,

make with various reinsuring companies only "open-policy" contracts, but that the necessity of their large business often compelled them to reinsure flat, as well as on an excess, and that it is not correct to say that all "open policies" are necessarily based on a reinsurance on an excess, and these policies, though "open," may as well be made flat up to any amount that may be fixed beforehand between the reinsured and reinsurer, the term flat meaning a fixed, positive sum, not depending on an excess over the usual amount of risk held by the reinsured, but payable by the reinsured without prorating with excess reinsurers at once, provided there be a loss to that extent.

674 5th. That the report, at page 4, previous to the quoting of letters of Oct. 6th & 11th, 1880, on the question of the result of the conference between Marshall J. Smith and the Hibernia Company, does not refer to or give due and proper weight and effect, as it should have, to the evidence of Charles Platt, Jr., concerning the preliminaries and interests and motives of both himself and Smith and Co., as stated in his examination at pages 207, 213, 214, 215, 216, 217, 218, 219, 220, 223, & *seq.*, and 229, 231, and, in fact, to the whole of the testimony of said witness, who was the witness of complainants themselves.

6th. That the report is erroneous in using, at page 7, the word "usual," which does not exist in the original letter (2) of 11th Oct., 1880, in the following quoted line: "Of course all risks accepted by me will be such that the Insurance Co. of North America carries their 'usual' line on;" that the testimony of Wm. A. Platt, page 202, referred to at page 6 of the report, does not justify the deduction therefrom—quite the contrary—that neither the letter of Smith & Co. to Chas. Platt, Jr., of 6th Oct., 1880, nor that of Chas. Platt, Jr., to Smith and Co., of 11th Oct., 1880, were written for or on behalf of respondents, nor did they bind respondents, as principals, in any manner, as erroneously inferred and maintained in the report, at pages 6, 7, 8, said letters having been merely written between the parties, Smith & Co. and C. Platt, Jr., for their mutual benefit and for the benefit of complainants, who desired to extend their own business, and neither of said letters being shown to have been communicated to respondents, whose only action in the matter

675 was to have allowed Chas. Platt, Jr., to obtain the agency and business of the Hibernia in connection with Smith & Co., also agents of the Hibernia, by enabling said Platt, Jr., to secure for his principals respondents' patronage in its large reinsurance business, following which promise of patronage by respondents the Hibernia issued to Chas. Platt, Jr., to carry out and use this advantage it had thus gained, policy No. 268, of date October 13th, 1880, the whole as shown by the two letters themselves, by the terms and conditions and especially the limitation clause on the endorsement of said policy, which has always been in the hands and custody of said Platt, Jr.; by the evidence of said Chas. Platt, Jr., from page 207 to page 233; by the evidence of Wm. A. Platt, 2nd vice-president and marine clerk during that whole time, page —, and by

the evidence of Chas. Platt, president for 12 years and in the company of respondents since twenty-five years, page —.

7th. That the report is erroneous in its construction, at pages 8 & 9, of certain expressions in the evidence of Chas. Platt, Jr., and in the inference therefrom, merely parts of said testimony being given and not the whole of it, which, when read in its entirety, shows the very reverse of the master's conclusions; and the report is also especially erroneous in stating, at pages 8 & 9, that the word "usual" was used, and also in alleging that the statements of Charles Platt, Jr., therein set forth were made in the presence and hearing of the president and vice-president, and are not disputed, 1st, because there was
676 no need of disputing what was not admitted, but, in fact, denied, by the witness, Platt, Jr., and, 2nd, because the vice-president, Wm. A. Platt, continuing his cross-examination, at page 239 to page 257, immediately after the examination of Chas. Platt, Jr., most emphatically and completely maintained the position and statements of Chas. Platt, Jr., who was and is a marine insurance agent, having a totally separate and distinct business and office, and not having then, more than now, any connection whatever with respondents, except as it may occur in the line as insurance agent, and who states that respondents have no interest of any kind in policy 268, more than any ordinary reinsured company has in the business of the company reinsuring it, and that respondents had nothing at all to do with the issuing of said policy nor with its being carried out, more than to know that Chas. Platt, Jr., had the authority under it to bind the Hibernia Company, his principal; and to the same effect is the testimony of Chas. Platt, president of respondents' company, also taken after that of Chas. Platt, Jr., from page 260 to the end thereof, at page 284; and, moreover, objection on behalf of respondents was made that no letters of Smith & Co. nor of C. Platt, Jr., nor doings, sayings, etc., of theirs could be used against respondents, unless their privity therewith should be shown, and this was never shown, but the contrary was established; and another objection also made was that no change, addition, or alteration by parol evidence should be made against them, against respondents, in the
677 policies alleged against them, said documents being full proof of their own contents and of the obligations of each party under the terms thereof.

8th. That the report at page 9 is totally erroneous, 1st, in inferring that which is not only — proven in the least, but which is gratuitously assumed by the master as a fact against direct evidence to the contrary—that is, that respondent had seen and approved the letters of 6th & 11th October, 1880; and, 2nd, in assuming without proof "that the object of policy 268 was to reinsure the excess lines of the Insurance Company of North America usually carried," when the truth is that said policy does not in its terms even mention or hint at the words "excess lines," and when also this totally untenable inference of the master is contradicted by all the witnesses who knew anything about the subject; and, 3rd, in assuming, against the terms of the policy itself and against the evidence, that said policy 268, though nominally made with Chas. Platt, Jr., was to reinsure

respondents only on risks in excess of their usual lines; and, 4th, in its statement that Chas. Platt, Jr., was acting for and representing defendants, pages 9 & 10 of report; all of which statements and conclusions are not justified in the least either by the contracts, the testimony, or the documentary evidence.

9th. Even admitting the alleged materiality of the alleged representations and of the alleged obligations thereunder of respondents (which they emphatically deny) under the letter of 11th Oct., 1880, concerning policy 268, nothing in said letter nor in policy 268 which grew out of it justifies the master's conclusion that the intention of the parties was to insure an
678 excess above any definite amount or usual lines, no such expression being used, either in the letter or in the policy, and the policy being a contract and clear and unambiguous in its language nothing can be added to it by implication or otherwise to change, alter, or vary it, and respondents have made formal objections to any such illegal alteration or inference; nor is the master's conclusion justified that policy 268 is the same as policies 277, 296, 297, & 306, the language and terms of the four said last policies being far different from those of 268, the four last being open policies on a stipulated excess made by complainants to respondents themselves directly and attaching and operative *ipso facto*—policy 277, from Spanish Main to ports in United States, whenever respondents had at risk an excess over $60,000.00; policy 296, East Indies to United States, whenever respondents had at risk an excess over $50,000.00; policy 297, West Indies to ports in United States, whenever respondents had at risk an excess over $50,000.00, and policy 306, from ports in United States to ports in Europe, on cotton only, whenever respondents had at risk an excess over $70,000.00, whereas policy 268 in its terms is totally different and distinct, being issued by Hibernia Company to C. Platt, Jr., at request of Smith & Co. and C. Platt, Jr., it, though an open policy, not attaching instantly nor operating by itself in the event of any stated condition, nor after any excess or any stated amount had been reached, but necessitating for its becoming operative a special application
679 made by respondents, directly or through their several agents in other cities, to Chas. Platt, Jr., as agent of complainants, for reinsurance to an amount specially stated in such application, the reinsurance under 268 being thus necessarily special, though it could be made at option either flat—that is to say, absolute and unconditional—or upon an excess over any stated or fixed amount. The terms of excess or of usual lines are not inserted in said 268, and the policy is more general and less restrictive, as it applies "at and from ports in the United States and foreign ports," thus being clearly made and intended for more general purposes than the four last-named policies; and also the reports of shipments and risks taken thereunder are made by Platt, Jr., to Smith & Co., the Hibernia's managers, through whose efforts, combined with those of Platt, Jr., part of the reinsurance business of respondents was given to complainants so that they could use their unemployed capital (see whole testimony of Chas. Platt, Jr., and the letters exchanged be-

tween him and Smith & Co.); and the master is also in error in his statement connecting as one undivided act and holding respondents under the several notes attached to the policies, reducing the amount of reinsurance risks to $5,000, the contrary being distinctly stated by the only witness to that effect, Chas. Platt, Jr., at page 219, and respondents not being shown, directly or indirectly, to be connected with nor interested in the change made at request of the
680 Hibernia; nor is the master justified by the evidence in his finding, at pages 10 & 11, that "these facts lead me to believe the respondent was to retain its usual line when it reinsured with complainant, and the risks complainant was to underwrite were only such as it (respondent) retained *as* its usual line on."

10th. The master states erroneously, in first at page 11, that "the usual line of respondents, as appears from the evidence, is $50,000.00;" that generally they reinsured the excess of $50,000.00, and that this sum, "therefore, was its usual line to be carried in all cases on risks with complainants under the contracts." The evidence shows quite the contrary, especially the uncontradicted testimony of Wm. A. Platt, at page 178 to page 190, and from page 190 to page 197, and to page 203, and from page 239 to 257, and also the uncontradicted testimony of Chas. Platt, president of respondent company, from page 258 to 283. This unwarranted assumption by the master of an absolute, fixed, and invariable $50,000.00 line for the sole purpose of securing such a small reinsurance as the Hibernia's would be most unbusinesslike and contrary to all ordinary rules of marine insurance, and nothing but the most direct and positive and convincing evidence to that effect could justify the finding of such a condition of contract as a matter of fact fully proven, and to this effect we have the evidence even of Prevost, secretary and business manager of complainants, and of Fourchy and Chaleron, witnesses for complainants, all confirming in effect the statements of Chas. Platt, president, and of Wm. A. Platt, vice-president and marine manager, and of the five presidents of five large marine com-
681 panies of Boston, New York, and Philadelphia, taken under commissions, that risks are constantly varying in amounts for a number of ever-changing causes and circumstances, and that there is not nor can there be an absolute, immutable, unvarying sum at risk which can ever be called a usual line for any company for all vessels, at all seasons, on all voyages, etc., equally and always. The very statement of the master's starting point of an invariable, usual line of $50,000, which he attributes to respondents under the penalty of forfeitures of reinsurance, on every vessel, at all times, from or to any ports, on all cargoes, is contrary and repugnant to the simplest business notions, and demonstrates forcibly its utter and intrinsic untenability, and the master states erroneously, at 2nd of page 11, that policy 268 would attach in favor of respondents on vessels and cargo only where the amount of the risks taken by respondents on any one vessel exceeded $50,000.00, a finding of fact entirely inferential, not substantiated by any evidence, when, on the contrary, the whole evidence, both parole and documentary, adduced in this cause, as well as the most ordinary and simple and business-

like construction and interpretation of a clear and explicit written contract, needing no outside evidence to explain its meaning, point out without doubt that policy 268 had no such restrictions imposed on it as those contained in 277, 296, 297, & 306, and that said 268 covered as to amounts all risk below $50,000.00, the higher
682 risks being provided for, said risks being very numerous and needing some provision, as seen in the testimony of Wm. A. Platt, and as to ports it covered those ports which the Hibernia was seeking to reach, and which were not mentioned in the four last special policies, the Hibernia taking and receiving without grumbling or complaining its premiums during three years on numberless applications for reinsurance made specifically and accepted under 268, the applications and particulars all coming to the Hibernia through its agent, C. Platt, Jr., and necessarily demonstrating on their face—at least all those made on excess, which were numerous—that the risks carried by respondents were very frequently on sums below and far below $50,000.00.

11th. The master's report, from page 12 to end of first paragraph of page 17, consists in noticing, at page 12, an application to reduce respondents' line on ship Tonawanda, and quotes thereon letter to Smith & Co. of March 10th, 1884; and in noticing letter of March 2nd, 1883, of Smith & Co. to C. Platt, Jr., asking him to notify complainants whenever respondents reduced their line, to which Platt, Jr., answered, in letter of March 7th, 1883, that he could not do so, having no facilities nor any information from respondents therefor; and in noticing letter of Ap'l 11th, 1881, alleged to have been sent by respondents to complainants for a policy covering an excess of $60,000.00, which application resulted in policy 277; noticing that on 9th & 10 Nov., 1881, respondent is alleged to have sent to complainants through Platt, Jr., two
683 other applications for reinsurance policies, one for ports from East Indies and the other from ports in the West Indies to United States, to apply on excess over $50,000.00, resulting in policies 296 and 297 forwarded to respondents through C. Platt, Jr.; noticing that on August 26th, 1882, respondents sent to complainants through C. Platt, Jr., an application for policy on cotton from United States to Europe on excess over $70,000.00, resulting in policy 306; all of which is noticed by the master to show, 1st, that those contracts were made through C. Platt, Jr., acting for respondents; 2nd, to show that in all those contracts and letters upon which they were based respondent was to carry its usual line as specified in said contracts; 3rd, to show that those policies are attached on the excess stated therein, up to $10,000, provided the risks were to and from the ports mentioned; and the master concludes that, when the two conditions of usual lines and ports mentioned concur, these policies apply, because, says he, otherwise respondent could have reinsured on vessels of every character, sea worthy or not, and in a most hazardous manner, and could have reinsured the whole risk to save itself from loss, "which was never contemplated by the contracts;" and,— the master, as all the policies and propositions for policies with complainants appear to have been made through C. Platt,

Jr., and copies of all applications and notices were transmitted to Smith & Co., who appear to have acted for complainants, and all demands for losses on risks reported were sent by respondent through Platt, Jr., to complainant, it appears, therefore, that
684 C. Platt, Jr., acted as agent of respondent, and Smith & Co. in New Orleans as agent of complainant, and as a further consummation of this finding a demand was made on Platt, Jr., to report particulars of risks as soon as taken, and this he could not do, as per his letters to Smith & Co. of Sept. 15th, 1883, and of June 15th, 1883, and quotes from letter of June, 1883, that from July 1st, 1883, amounts of reinsurance by Hibernia will be reduced to $5,000, as requested by letter of Smith & Co. of 9th June, 1883, showing, concludes the master, that C. Platt, Jr., acted for respondents, and Smith & Co. for complainants, and further aids and supports the conclusion by the fact that complainant, on Nov. 23rd, 1883, notified respondent, through Platt, Jr., that it wished all its open policies with respondent cancelled, all of this satisfying the master that the business was for the respondent, and that all that Platt, Jr., did was with its knowledge, approval, and direction. First noticing that letters of 11th April, 1881, and of Sept. 15th, 1883, are not in the record and do not appear to have ever been filed, and admitting, though not having them before him, the applications through C. Platt, Jr., by respondents to Hibernia (but not the alleged letters, which were never sent and are not in evidence) for open policies on excess Nos. 277, 296, 297, & 306, and admitting the letters on record exchanged between Smith & Co. and Platt, Jr., which have been cited and from which extracts have been given in the report, it does not follow, as the master erroneously infers and concludes, that Platt, Jr., was the agent of respondents and acting for them and binding them
685 by all his acts, doings, and sayings. On the contrary, Chas. Platt, Jr., Wm. A. Platt, and Chas. Platt, president, all concur in saying that such was not the case; that respondents had no interest whatever in the matter and did not correspond nor interfere concerning it, nor were they consulted, nor were they shown letters, nor did they give advice, approbation, or assent to any of the acts of either the Hibernia or Smith and Co. or C. Platt, Jr., concerning this reinsurance business, except when and in so far as their own interests as reinsured were concerned, and then strictly for their own (respondents') interests; that respondents, merely as a favor to C. Platt, Jr., and to his friends in New Orleans, for the brokerage fees they might make out of it and for the premiums that might accrue to C. Platt Jr.'s principal, the Hibernia, gave them a share of their large business and extensive patronage. The testimony explains fully, well, and satisfactorily why all the business was conducted through Platt, Jr., it being because of its convenience, its simplicity, the advantage it might bring in brokerage fees to Platt, Jr., and because since the issuing of policy 268 C. Platt, Jr., had been, with his friends, Smith & Co., the open and recognized agents of the Hibernia in all this reinsurance business, allowed and promoted by respondents at the very request of the Hibernia, made through Smith & Co. and Platt, Jr., both agents of the Hibernia;

and for these reasons it had been customary and was very natural that all communications should pass through the hands of Platt, Jr., not because he was respondents' agent, but because, on the contrary, he was complainants' agent.

686 When respondents wished direct open policies on excess they so requested and obtained them in their own name and not under a cover never needed. In fact, an agent of the Hibernia was needed in a policy such as 268, where no excess was stipulated, as being the beginning of an *ipso facto* risk, and where, moreover, a direct application for reinsurance was required to effect the same and to render the policy operative. The letters quoted by the master, as well as those not quoted by him and which have been overlooked—to wit, Aug. 28th, 1882, Sept. 4th, 1882, Sep. 8th, 1882, Sep. 14th, 1882, Sep. 15th, 1882, June 18th, 1883, June 9th, 1883, Nov. 23d, 1883, as well as all the other letters filed herein—instead of leading in the least to the inference that Platt, Jr., was the respondents' agent, lead, in fact, and when taken either separately or altogether, to the contrary inference, that he was the agent of the Hibernia, which latter, even in the matter of the cotton policy, could not obtain from respondents that they deviate from their policy of reinsuring not lower than a certain sum—say $5,000; and respondents, furthermore, not allowing the Hibernia the privilege of lowering its $10,000 reinsurance on excess of $70,000 *pro rata* of the lowering, so far as the respondents might lower their own risks, clearly showing that at that time the Hibernia did not have the pretension it has now, that because their reinsurance policies attached over $50,000 or $60,000 or $70,000 therefore the reinsured respondents must carry the whole amount to destination and can never reinsure

687 with other companies to reduce their risks; and, finally, letter of Platt, Jr., to Smith & Co., of Nov. 23d, 1883, in which he states: "I have given notice to Insurance Company of North America that the Hibernia desires to cancel their open policies, in accordance with their terms, from this date, and I will accept no new business from to-day," which letter clearly indicates that he gave notice to the respondents and acted not for the latter, but as agent and representative of the Hibernia and at their request. The letter of June 9th, 1883, from Smith & Co. to Platt, Jr., is also to the same effect, and the whole evidence, even that of Prevost, secretary of the complainants, in his cross-examination, shows that the whole brokerage fees were paid to Smith & Co. and Platt, Jr., out of the premiums earned by the Hibernia and which they were allowed to keep, and it follows necessarily that both Smith & Co. and Platt, Jr., were the Hibernia's brokers and representatives and not those of respondents. As the testimony on this is direct, positive, and uncontradicted it should be held as decisive of the question, and in not giving proper consideration, weight, and effect to the evidence adduced the master is wholly in error in his decision on that point of agency, he assuming as facts that which was never proven, wholly neglecting and overlooking the facts proven in favor of respondents on the question at issue, the whole argumentation of the master begging the question, presuming fraud as a close possibility—a

matter which the law forbids to presume in any manner and which the law of ordinary business equally forbids to be and which cannot be presumed in a respectable and flourishing insurance com-
688 pany, referring as proofs of a fact to acts of complainants which, as to defendants, could never be proof against them, as one cannot manufacture his own evidence to suit himself, and said argumentation being altogether groundless, erroneous, incorrect, and not flowing from the premises and true state of facts as developed by the evidence.

12th. From the beginning of the 2nd paragraph, at page 17 of the report, until the last paragraph at page 22, the master states that complainants inquired into and knew of respondents carrying on vessels lines of risk far below the alleged and pretended usual line of $50,000, in which cases the losses had been paid by complainants, and he puts to himself the question whether respondents had a right so to do under the terms of the contracts and quotes several cases as to material misrepresentations, and interprets the contracts in this manner: that, according to him, the complainants were bound on the marine risks only when respondents carried their alleged usual line, which he assumes to be invariably $50,000, and that complainants were not bound whenever respondents failed to carry $50,000 unless previous notice of such fact was given and the risk after such notice accepted, and he quotes authorities on misrepresentation, even when not fraudulent, up to the beginning of last paragraph of page 22.

The first error of the master is in misinterpreting the several contracts, which are clear and easily understood in their terms and are not really susceptible of nor amenable to any interpretation
689 by means of outside evidence, none such being necessary, and the grave error of the master consists in this misinterpretation and want of consideration of the whole evidence and erroneously considering and commenting and passing upon part of the evidence and entirely overlooking the rest thereof in determining, as a matter of fact, that policy 268 was that of respondents, that Platt, Jr., was their agent, and that their so-called usual line was positively and invariably on all vessels, voyages, cargoes, &c., exactly $50,000, and that through Platt, Jr., and Smith & Co. they had so informed complainants, and that therefore, in all cases where respondents had taken risks below $50,000 and had reinsured under 268, they had done so without right under the terms of 268, and, having misrepresented the facts, the risks never attached, and they must return to complainants the several amounts of losses paid by them in such cases, less the premiums. The contracts are each separate and distinct and must be considered each one by itself. There is no reason in the world to club them together in one mass and then draw forced and unnatural inferences therefrom. Policy 268 was made general in its terms, from and to all ports, and was not limited as to amounts nor as to the method of reinsuring, whether flat or on a stated excess; was not an open, self-operating policy, but could only be put in force by specific applications for reinsurance in each and every case thereunder, whether the ap-

plication was flat or whether on an excess; was issued to Chas. Platt, Jr., a marine broker, by the Hibernia after conference with its friends and agents here, Smith & Co., for the mutual benefit of the Hibernia, Smith & Co., and Platt, Jr., all the
690 brokerage being paid by the Hibernia, as well proven. It appears, though, that the Hibernia, through Smith & Co., its agents here, limited Platt, Jr., to reinsurance with respondents, but that for its own convenience or security, if it did not wish to extend its operations further, and this line, taken for its own and sole benefit, could have been ended at any time by it and its agent, Platt, Jr., allowed to reinsure other companies to a large amount, and with all this respondents have no connection, interest, nor even knowledge, as show in evidence. Why, then, should the master call Chas. Platt, Jr., the agent of respondents and not the agent of the Hibernia, as he really was, any more than he would or could call agents of respondents the numerous other companies in Pennsylvania, New Jersey, New York, Massachusetts, and elsewhere which did and do yet for respondents the same identical business of reinsuring them as did the Hibernia through Platt, Jr.? The facts do not warrant any such distinction or conclusion of the master. As to a knowledge by the Hibernia, from the very inception, in 1880, up to the very middle of 1883, that respondents very frequently carried lines less than $50,000, their very business knowledge should have taught them this, and they cannot now be heard to plead their own ignorance, if ignorance it ever was.

An insurance company takes what good business it finds, and if the amount of risk is too high it reinsures. As experts in the business the Hibernia should have known and they did know and were informed as a matter of fact, through both of their agents, Smith & Co. & Platt, Jr., that under policy 268 they had reinsured
691 respondents on lines carried by them far below the alleged standard line of $50,000, say an excess of $45,000, $40,000, $35,000, $30,000, $25,000, and even less. This is conclusively shown & without doubt by the very applications for reinsurance and particulars thereof all under 268, sent to them by their agent, Platt, Jr., through their other agents, Smith & Co., and the Hibernia never raised a voice nor interposed an objection until it happened that they made less money than they had anticipated out of the three years' transactions, though the evidence shows that complainants received from respondents as much and even more premiums than they paid losses. I refer the master to, amongst others, steamer Avlona, X 2, policy 268, on excess over $25,000, cargo, Oct. 18th, 1881; bark Impi, X 5, policy 268, on excess over $30,000, wheat, Aug. 28th, 1882; ship Obi, X 1, policy 268, on excess over $25,000, sugar, June 11th, 1881, and, in fact, if complainants had offered in evidence all their particulars of reinsurance under policy 268, it would be found that it is clearly demonstrated that in innumerable cases complainants had knowledge and information through Smith & Co., through C. Platt, Jr., through the applications for reinsurance and the particulars sent to them in so many cases under policy 268, and especially through the evidence of Wm. A. Platt,

second vice-president and the marine clerk, taken from the books of respondents before the master, and through the testimony of the five marine insurance presidents, taken under commissions, that complainants could not help knowing and must have known and could not have inferred otherwise from the above-
692 cited reinsurance on less than excess over $50,000 that respondents insured under policy 268, by special applications, all those risks which, either owing to their being less than $50,000, $60,000, or $70,000 or owing to their not being on vessels to or from ports covered by the open policies which attached *ipso facto* and were self-operative, could not be reinsured otherwise with complainants, and of this the latter could not help being and were cognizant and assenting thereto, and it thus appears that the alleged usual lines of respondents did vary as those of any other company in the world and that the Hibernia knew it. The other policies, 277, 296, 297, and 306, are self-explanatory, being issued directly to respondents, and were also self-operative by the mere fact of respondents carrying on any one vessel over $50,000 or $60,000 or $70,000 on the voyages specified therein. They did not cover so much ground as policy 268, and only required of the respondents to notify complainants through their chosen agent, Chas. Platt, Jr., of the probable amount of total risk to be followed as soon thereafter as possible by the particulars.

The second error of the master is in assuming that respondents did not fulfill their obligations under the contract to the letter, when the uncontradicted evidence clearly shows that they did fulfill honestly and completely all their obligations as a reinsured company under the several contracts cited; that they made true and proper representations, gave the proper and true particulars and no-
693 tices, paid the proper premiums, and settled all losses for the best advantage of all parties concerned, and especially is it proven by the testimony that they did in effect and in every particular carry at their own risk their usual line on each vessel in each particular voyage, except in the two cases of the Budstikken and the Adele, which are fully explained, having happened by accident and which, being stated in the interrogatories to the most expert marine insurers of New York, Boston, and Philadelphia, were considered as cases that might happen accidentally to any company, and this carrying of their usual line in every instance on each vessel is shown specially from respondents' books examined by the master in the testimony of Wm. A. Platt, at page —, and of Chas. Platt, pres't, at page —, and so much was the good faith and truthfulness and correctness of respondents then seen and made apparent that near the last day of the examination, in presence of the president and vice-president aforesaid and of the undersigned solicitor, Mr. Sansum, solicitor for complainants, deemed it his duty to call the especial attention of the master to the fact that he was satisfied there was no fraud that could be charged against the respondents; that they had shown the fairest and most honest dealings and had kept their books in the clearest and most correct manner possible, which statement the master is now called upon by the undersigned

to make explicitly in his report to the court, it being set forth therein.

The third error of the master is one of law when he assumes that respondents were bound in law and in equity, under
694 policy 268, to carry a usual line, which line, though they did actually carry with the Hibernia, they maintain they are not obliged to carry at all, they pretending and maintaining, as a matter of right, that they may reinsure at pleasure even up to the whole amount of their risk, provided there be no frand, and, on the excess policies, that they may reinsure with other companies below the excess without vitiating the reinsurance above said stated excess policies. As to the law quoted by the master, it is quoted in error in that it is wholly inapplicable to the facts of this cause.

13th. The master in his report, from page 23—"usage as applicable to contracts"—to page 27, refers to authorities on the subject and refers to testimony of Fourchy, Chalaron, taken on behalf of complainants, to the effect that they would not pay a loss reinsured when the reinsured carried no risk; states that this is the custom and that it is not disputed by any contradictory evidence; that he does not find evidence to sustain respondents' views; that Chas. Platt, Jr., was the agent of complainants and that his knowledge was their knowledge; argues from the last paragraph on page 24 to page 27 in an endeavor to show that Chas. Platt, Jr., could not be and was not the ag't of the Hibernia, stating the proposition as leading to an absurdity, and concludes by asserting that "the evidence makes it very clear that policy 268 was made for the benefit of respondents only."

Respondents respectfully suggest that the master is in error on the first proposition, as the question to be decided is not one of usage, but clearly and solely one of interpretation and effect of con-
695 tracts, and therefore the law quoted finds no application, and that, if it even were considered a question of usage, the master is yet in error in having merely examined the testimony and opinions of Fourchy and Chalaron, witnesses of complainants, and in not having examined, referred to, and given its full and due weight to the pointedly contradictory opinion of five experts, presidents of the largest marine insurance companies of the leading cities—of New York, Boston, and Philadelphia—some of those the neighbors and all the competitors of respondents, to wit, Ransum B. Fuller, president Boston Marine Insurance Company; Henry D. Sherrerd, pres'd't of Insurance Company of the State of Pennsylvania, of Philadelphia; Thos. C. Hand, pres'd't Delaware Mutual Safety Insurance Company of Philadelphia; W. J. Comes, pres'd't Commercial Mutual Ins. Co. of New York; Ferdinand Motz, pres'd't of the Great Western Marine Ins. Co. of New York, who all state that, as in the case of the "Obi," put them in the interrogatories, it would not be reasonable for the Hibernia to think or infer that the respondents carried more than $25,000, say more than $50,000, on that voyage; that it is not customary for companies to bind themselves to an invariable amount as to risks to be carried by them, and as to the payment of a loss in the cited case of the "Adele,"

where it was found that at the time of the loss and by accident the flat reinsurance covered more than was actually on board, they all declared, having been interrogated thereon, that the flat reinsurers properly paid the loss and were so bound. In fact, their evidence, taken under commissions, maintains fully and completely all the points
696 as to usage and interpretation and effect of contracts, etc., asserted by respondents in their defence against the claim of complainants, and this overwhelming testimony as to weight and authority should be held superior to any other produced here of estimable men, it is true, but who never have had such an extended and complete experience.

That the master is in error on the second proposition, that there is no evidence to show that Platt, Jr. was agent of complainants, and that his knowledge was theirs, and that he could not be their agent, the reasons for this assignment of error having been fully stated hereinabove, the undersigned believing and respectfully setting forth that, in his judgment, the master's argument is unfounded in fact, proves nothing, and defeats itself; and, as to the conclusion of the master that the evidence shows that policy 268 was made for the benefit of respondents only, the undersigned begs leave to think and assert that, in his judgment, the whole evidence properly weighed shows exactly the contrary, the reasons of this assignment of error having been hereinabove fully set forth.

14th. From the preceding exceptions, if well founded, the master is necessarily in error, and so he is, in the opinion of the undersigned, on all the special cases from page 27 to page 47 of the report, thirteen in number; and, the reasons for each allowance being detailed in each, the undersigned, for brevity, now sets forth that there is error in the master's decisions and finding of amounts in
697 each and every case when he has found for complainants, and he will give a special assignment of error in such cases only as he may think are different from those where the general evidence and the law of contracts are involved. First, pages 27 to 29 of report, as to ship "Obi," the master is in error, not only because of the reasons alleged in the preceding objections of the undersigned, but because, also, he erroneously assumes that due notice was not given to complainants, and that there is no evidence of the intention of respondents so to do, when the contrary is the case, respondents having acted therein in the usual manner and custom of marine companies; and the master is also in error when he claims that, under the circumstances of the case, respondents should have given complainants reasons for reducing.

Steamer Avlona, from page 29 to 3rdly, page 32 of report:

The whole statement of the master here is incorrect and erroneous, and especially erroneous in the alleged fact that complainants had no knowledge that the respondents carried less than $50,000 on this voyage, and also in the alleged fact that respondents endeavored to and did obtain reinsurance with the Hibernia after knowledge of the loss and damage was known to them and published. The evidence discloses no such state of facts, but quite the contrary.

Bark Yorkshire, from page 32 to page 33 of report:

All errors under the foregoing general exceptions, no special exceptions being deemed necessary in this case.

698 Bark ——, from page 33 to page 34: Same as Yorkshire, the report itself setting forth knowledge of complainants in this special case.

Bark Budstikken, from page 34 to p. 36 of report:

The error of the master is, as usual, his mistaken idea of an absolute and invariable $50,000 risk on every vessel on every voyage on the part of respondents. As to the other facts stated, the evidence discloses that everything was done and notice given in due course of business and as promptly as possible, and the prorating of the loss was properly made, as well as it could be under the contracts of reinsurance of respondents with complainants, and if it be claimed that the *pro ratum* was not correct the Hibernia, who profited by it, cannot be heard to complain, having no interest; and, moreover, this point having been raised only in argument here and not in Philadelphia, where alone it could have been explained, if error there was, which is denied, it is now too late to make it, complainants being estopped. The fact of an accidental non-interest in the risk on the part of respondents has been fully and satisfactorily explained, the position of respondents being supported by the evidence taken under commissions. The loss was due and properly paid by the complainants as reinsurers, the master being in error as to the facts and the law in this case.

Steamer Peruvian, from p. 36 to p. 37: Same errors as alleged in Yorkshire above.

699 Barks Ocean and Skerryvore, from p. 37 to 9th of p. 38 of report: Same errors as alleged in bark Yorkshire.

Bark Adele, from p. 38 to 10th of p. 40 of report:

The statement of master is erroneous, and the facts were fully and correctly stated in the evidence of William A. Platt. The notices and information of loss and all other necessary particulars were duly given at a proper time, as soon as possible, to the reinsuring companies, including complainants.

Barks Etimologia and L. E. Cann, from pp. 40 to 41: Same errors as alleged for bark Yorkshire.

Ship Matchless, from p. 41 to 13th of p. 43 of report:

This statement is erroneous in fact and in law. The amounts to be paid were duly and properly prorated and paid both in equity and under the contracts between complainants and respondents, and, even were the prorating improper, it is too late to urge it now, as it should have been urged in Philadelphia, and not here merely and for the first time in argument, respondents being taken by surprise after having called on complainants to disclose in Philadelphia all that they wanted to know, the whole source of information being there, and there being no means here of proving the correctness of the *pro ratum*. The complainants are, therefore, estopped from all claim on this ship, if any they really ever had, which is denied, and there is error in the allowance of this claim by the master.

Ship Adam Simpson, from p. 43 to p. 46: Same errors of the master as alleged for "Matchless" hereinabove.

700 15th. There is error in not allowing claim "B 7" of respondents for a balance of $209 65 cts., as, in addition to the admission of complainants stated by the master, a further admission was made to save delay as to the correctness of the claim and as to its being allowed as good and regular and due, this admission being probably in the minutes of the proceedings had before the master.

16th. There is no equity in the claim of complainants nor in the award of the master in their favor, as this suit merely claims repayment of the losses and does not offer a repayment of premiums on the numerous other cases of risk below $50,000 under policy 268, in which there was no loss, and complainants yet keep the premiums, the evidence showing that the total amount of premiums received by complainants is larger than the total amount of the losses paid by them. Complainants will thus become rich at the expense of respondents, who, under the decision of the master, will have run all the risks, whilst complainants, without any risks at all, since all contracts below $50,000 are invalidated by the master, will have reaped all the benefits of the premiums paid without supporting any of the losses.

17th. One fundamental error of the complainants and the master seems to be that they have assumed erroneously that it is the reinsured who is benefited, whereas the contract is, in its very nature, strictly commutative, doubtless; and if some one is benefited
701 specially it is the reinsurer, who cannot leave his capital idle and who is always in search of customers for its employment. Such being the law of business, the master is finally in error in this, that he has not applied in his findings that complainants, in order to recover, must prove their allegations and charges clearly, conclusively, positively, and without the least doubt—a proof that they have not made, the undersigned respectfully contends; and he is furthermore in error in his examination and report as to the questions of fact and of law in so far as they concern respondents, who have not only successfully, as the undersigned believes, defended themselves against attack, but who have proven affirmatively the allegations of their defense, and who are therefore entitled to a dismissal of the bill of complaint and to a judgment in their favor for the balance due them.

18th. The master is finally in error in this, that he had not applied in his findings the law that complainants, in order to recover, must prove their allegations and charges clearly, conclusively, positively, and without the least doubt—a proof that they have not made, the undersigned respectfully contends; and the master is furthermore in error in his examination and report as to the questions of fact and of law in so far as they concern respondents, who have not only successfully, as the undersigned believes, defended themselves against attack, but who have proven affirmatively the allegations of their defence, and who are therefore entitled to a dismissal of the bill of complainants and to a judgment in their favor for the balance due them.

702 19th. That the master erred, even admitting that his views of the evidence and of the law and his conclusions are cor-

rect, in so far as he has expressed them in his report, in this, that if all the risks reinsured and taken under policy No. 26[illegible] below the master's assumed usual line of $50,000 are void and contrary to the contract, as he declares, then he should have declared void and inoperative all the other risks below $50,000 in which no loss had occurred and in which the complainants, benefited by the premiums, paid to them, and that in order so to do it is necessary that a full and complete account of all the risks under all and each of the policies *to* be made by him, and the respondents credited with the premiums paid by them in all the cases where no loss occurred, as well as in those where a loss occurred and was paid by complainants, the report of the master being incorrect and incomplete as to the facts by the examination made by him of respondents' books, and it being believed and here asserted by exceptors that a full examination and report would show, as well as the evidence on the same does now partly show, that they are entitled—even admitting the views of the master as correct—to a return of a larger sum for unearned and untrue and erroneously paid premiums than the sum allowed to complainants by the master.

Respectfully submitted,

E. SABOURIN,
*Solicitor for Respondents.*

703 HIBERNIA INS. CO. *vs.* INSURANCE CO. OF NORTH AMERICA. } No. 10647.

On motion of Thomas Gilmore & Sons and O. B. Sansum, solicitors for the complainants, it is ordered that the exceptions to the master's report in this cause filed by respondents be set down for hearing on Tuesday, the 5th day of January, 1886, at 11 a. m., and that defendants, through their solicitors, be notified thereof.

*Hearing of Cause Continued.*

Extract from Minutes.

NEW ORLEANS, TUESDAY, *January 5th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INS. CO. *vs.* INS. CO. OF NORTH AMERICA. } No. 10647.

By consent of solicitors for the parties respectively the exceptions herein filed by the defendants to the master's report are continued until Tuesday, January 12th, 1886, at 11 a. m, for hearing.

*Hearing of Cause Continued.*

Extract from Minutes.

704 NEW ORLEANS, TUESDAY, *January* 12*th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INS. CO.
*vs.*
INS. CO. OF NORTH AMERICA. } No. 10647.

On motion of solicitors for parties in interest it is ordered that the exceptions herein to the master's report lay over until to-morrow, at 11 a. m.

*Heard and Submitted.*

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *January* 13*th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INS. CO.
*vs.*
INSURANCE CO. OF NORTH AMERICA. } No. 10647.

This cause came on to be heard on the exceptions of the defendants to the master's report herein and was argued by counsel for the parties respectively and submitted, when the court took time to advise.

705 *Decree. Entered and Filed* 12 *March*, 1886.

THE HIBERNIA INSURANCE CO.
*vs.*
THE INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

This cause came on to be heard upon the complainants' bill of complaint, the answer, replication, exhibits, depositions of witnesses, and proofs offered by the respective parties, as well as upon the master's report and the defendants' exceptions thereto; and the court, having heard arguments by counsel for the respective parties, took time to consider; and the court, being fully advised in the premises, on consideration thereof, doth now order, adjudge, and decree that the defendants' said exceptions to the said master's report be, and the same are hereby, overruled; and the court doth further order, adjudge, and decree that the said master's report and all matters and things therein stated and — forth be, and the same are hereby, ratified and confirmed absolutely, and that the said master's report and the

matters and things therein stated and set forth be, and the same are hereby, adopted and made the judgment of the court as fully as if the same was herein written word for word.

And the court doth further order, adjudge, and decree that the defendants, the said Insurance Company of North America, be, and are hereby, condemned to pay to the complainants, the said
706 Hibernia Insurance Company, the sum of twenty-seven thousand nine hundred and eighty-six dollars and seventy-nine cents, with interest thereon at the rate of five per centum per annum from judicial demand—that is to say, from the thirteenth day of August, A. D. 1884—with their costs, to be taxed, and that they have judgment and execution therefor.

In open court March 12th, 1886.

DON A. PARDEE, *Judge.*

*Petition for Rehearing. Filed March 12th*, 1886.

United States Circuit Court, Louisiana.

HIBERNIA INSURANCE CO.
*vs.*
INSURANCE CO. OF NORTH AMERICA. } No. 10647.

Come defendants, through their undersigned solicitor, and respectfully pray for a rehearing on the judgment rendered herein against them for, amongst other reasons, the following:

1st. That the judgment herein is against the law and the evidence.

2nd. That the court has erred in adopting and maintaining, as proven, the master's mere assumption that defendants did represent to complainants, either directly or indirectly, that they would invariably carry at risk a line of $50,000 on every vessel, on every voyage, at every season, to or from every port, under all cir-
707 cumstances, in order to keep good and secure their reinsurance with complainants under policy No. 268, when in fact the defendants, The Insurance Co. of North America, never did, either directly or indirectly, make such a representation to complainants, The Hibernia Insurance Company.

3rd. That the court has erred in adopting and maintaining the master's opinion that Chas. Platt, Jr., was the agent and representative of defendants and not, as he was in truth, the paid agent and representative of complainants.

4th. That the court erred in adopting and maintaining the master's wholly illogical opinion as to the construction, meaning, and effect of policy No. 268 in this, that the master, assuming that policy No. 268 is an open policy on the excess of $50,000 and consequently self-operative, delares null all reinsurance under $50,000 reported thereunder by defendants, and yet recognizes as valid the flat reinsurance made by virtue of the same policy.

The glaring error consisting in this, that an open excess policy attaches *ipso facto* and *eo instante* whenever the excess of the actual

original insurance, say the excess over $50,000, is reached, whether or not the reinsured company makes the necessary declarations and furnishes the necessary particulars, and therefore such an open policy on excess requires for its operation and effect no active interposition of either party thereto except as usual. The information of the amount of risk reinsured which should be given by the reinsured *which* formality even is not necessary for the binding force of the contract, whereas a flat (or absolute) reinsurance is not pro-
708 vided for by and cannot be made under an open reinsurance policy on excess, as above stated, because a flat reinsurance causes the reinsurance to take the place absolutely of the reinsured *pro tanto* to the extent of the amount reinsured, whatever the amount reserved and kept as his own risk by the reinsured himself, and this operation necessitates a special application by the reinsured to the reinsurer who accepts the same, without which special application and special acceptance no reinsurance exists, the open excess and flat reinsurance contracts therefore being totally and essentially dissimilar in their tenor, operation, and effect, and it being completely illogical and untenable and impossible by the very nature of the contract that, as pretended by complainants, said policy 268 could operate both as an open stated excess policy over $50,000 and as a special flat reinsuring policy or instrument of one and the same time, the one assumption or theory being flatly contradictory of the other, and the evidence demonstating that policies, flat as well as policies on excess, under $50,000 have been almost daily accepted during three years by the Hibernia willingly and knowingly under said policy 268.

6th. That the court erred in adopting and maintaining the master's opinion of his duty under the law, the equity, and his own order of reference herein in selecting as he has done 13 cases of losses wherein the defendants are declared liable for the return of the amount paid to them for losses, less the premiums, for the professed reason that defendants carried in each of said cases risks less than $50,000, the amount alleged and pretended to have been rep-
709 resented as a condition of reinsurance to be always and at all times carried at risk on every vessel by defendants, whereas the master has not chosen to examine the whole books of defendants tendered to him and under his control and to make a full and complete account under his assumed theory of debit and credit between the parties hereto, as he was ordered to do, and he has not, therefore, credited defendants with the premiums to be returned to them in all the cases where no loss did occur, but where, nevertheless, complainants, The Hibernia, did receive and did keep and yet hold and refuse to surrender or account for the premiums so paid to them without cause or consideration by defendants as under the theory adopted by the master and the court. All reinsurance under 268 on vessels where defendants carried risks below $50,000 is void, and said reinsurance being thus void no risk was ever run or undertaken by complainants, and consequently the premiums paid to them in such cases by defendants were never earned and were paid in error and without cause, taking for granted the theory of com-

plainants, and should therefore be accounted for and returned to defendants in case the court finally maintains the whole report of the master as to the theory of an inflexible and immutable $50,000 contract risk on every vessel, &c.

E. SABOURIN,
*Solicitor for Def'ts.*

*Rehearing Refused.*

Extract from Minutes.

NEW ORLEANS, TUESDAY, *March 30th*, 1886.

Court met pursuant to adjournment.

710 Present: Hon. Don A. Pardee, circuit judge.

HIBERNIA INS. CO.
*vs.*
INSURANCE COMPANY OF NORTH AMERICA. } No. 10647.

This cause came on to be heard on the motion of the defendants for rehearing and was submitted to the court by counsel. On consideration whereof it is ordered that the said motion be overruled and a rehearing be refused.

*Petition for Appeal. Filed April 9th*, 1886.

U. S. Circuit Court, Eastern Dist. of Louisiana.

THE HIBERNIA INS. CO.
*vs.*
THE INSURANCE CO. OF NORTH AMERICA. } No. 10647.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of The Insurance Company of North America, defendants in the above-entitled cause, respectfully represents that on March 12th, 1886, a judgment was rendered against defendants in favor of complainants for the sum of ($27,986.79) twenty-
711 seven thousand seven hundred and eighty-six $\frac{79}{100}$ dollars, with interest thereon at the rate of five per centum per annum from judicial demand, to wit, 13th of August, 1884, with costs of suit, which said judgment became final on the 30th of March, 1886, by the refusal of a motion for a rehearing; that defendants consider themselves aggrieved by said decree and desire an appeal, to operate as a supersedeas, to the Supreme Court of the United States.

Wherefore they pray to be allowed an appeal from said decree and judgment, returnable to the Supreme Court of the United States at its next regular term, on furnishing bond and security, as required by law, in the amount to be fixed by this honorable court, and that said appeal operate as a supersedeas upon said bond being filed

within the legal delays, and that complainants be cited to answer this appeal, and petitioners pray for all and general relief; and as in duty bound, etc.

E. SABOURIN,
*Solicitor for Defendants and Appellants.*

*Order. Appeal Granted.*

NEW ORLEANS, FRIDAY, *April* 9, 1886.

Court met pursuant to adjournment.
Hon. Edward C. Billings, dist. judge.

Let an appeal to the Supreme Court of the United States, returnable at the next term of said Court, be granted to defendants upon their furnishing bond, with surety, according to law, in the sum of forty thousand dollars, and let this appeal operate as a
712 supersedeas upon said bond being duly filed.
New Orleans, 9 April, 1886.

EDWARD C. BILLINGS, *Judge.*

*Bond for Appeal. Filed April 9th,* 1886.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Insurance Company of North America, as principal, and Brown Bros. & Co., of New York city, and W. F. Halsey, of New Orleans, as sureties, *in solido*, are held and firmly bound, jointly and severally, unto The Hibernia Insurance Company of New Orleans in the sum of forty thousand dollars, lawful money of the United States of America, to be paid to the said obligees, The Hibernia Insurance Company of New Orleans, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the ninth day of April, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said Insurance Company of North America having heretofore, to wit, on the ninth day of April, 1886, taken an appeal to the Supreme Court of the United States from and to re-
713 verse the decree rendered on the 12th and 30th days of March, 1886, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of The Hibernia Insurance Company of New Orleans *vs.* The Insurance Company of North America, No. 10647 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Insurance Company of North America shall prosecute their said appeal to effect and shall answer all damages and costs if

they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

INS. CO. NORTH AMERICA,
MARSHALL J. SMITH, *Attorney*, & [L. S.]
Per E. SABOURIN, *Solicitor*. [L. S.]
*p. p.* BROWN BROTHERS. [L. S.]
W. F. HALSEY.
W. F. HALSEY.

Signed, sealed, and delivered in the presence of—
E. SABOURIN.

Bond approved.
April 9th, 1886.

EDWARD C. BILLINGS, *Judge*.

UNITED STATES OF AMERICA, } ss:
*Eastern District of Louisiana*, }

Personally appeared W. F. Halsey, of New Orleans, who, being duly sworn, deposes and says that he and the firm of Brown Bros. & Co., of New York, are the sureties on the within bond;
714 that Brown Bros. & Co. are domiciled in New York city, and that affiant, W. F. Halsey, who is the agent of said Brown Bros. & Co., resides in the city of New Orleans, and *are* worth the full sum of forty thousand dollars over and above all of his debts and liabilities and property exempt from execution.

*p. p.* BROWN BROTHERS.
W. F. HALSEY.
W. F. HALSEY.

Subscribed and sworn before me this 9th day of April, 1886.
T. McC. HYMAN,
*D'y Cl'k U. S. Circuit Court, Eastern District of Louisiana.*

715 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 714 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of The Hibernia Insurance Company *vs.* The Insurance Company of North America, No. 10647 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 17 day of September, A. D. 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk*.

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 17 day of September, A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

716 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Hibernia Insurance Company of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Hibernia Insurance Company of New Orleans are complainants and The Insurance Company of North America, of Philadelphia, Pennsylvania, are defendants, to show cause, if any there be, why the decree rendered against the said defendants, The Insurance Company of North America, as in said petition of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

717 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10647. Hibernia Ins. Co. *vs.* Ins. Co. of North America. Citation.

*Marshal's Return.*

Received Apr. 10, 1885, by the U. S. marshal, and on the 10th day of April, 1886, I served a true duplicate of the within citation and order of appeal on the Hibernia Insurance Co. by handing the same in person to Mr. Thomas Smith, vice-president and acting president of said Hibernia Insurance Co., and placing the same in his hands in New Orleans.

R. B. PLEASANTS,
*U. S. Marshal,*
JNO. BAKER,
*Deputy U. S. Ma.*